

Transcript of the Testimony of:

ROD SLAPPY-SUTTON

Date: February 27, 2017

Case: ROD SLAPPY-SUTTON v. SPEEDWAY, LLC

DIAMOND COURT REPORTING

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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

ROD SLAPPY-SUTTON, :

And :
:

JEAN SUTTON h/w :
:

Plaintiffs, : No.

: 2:16-cv-04765

vs. :
:

SPEEDWAY, LLC, :
:

Defendant. :

February 27, 2017

Oral Deposition of ROD SUTTON, taken at
the Law Offices of Litchfield Cavo, 1515 Market
Street, Suite 1220, Philadelphia, Pennsylvania
19102, on the above date, beginning at
approximately 2:14 p.m., before Douglas S.
Diamond, Certified Court Reporter and Notary
Public in and for the Commonwealth of
Pennsylvania, there being present.

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1 ---
2 (It was stipulated by and between
3 counsel that signing, sealing,
4 certification and filing be waived; and
5 that all objections, except as to the
6 form of the question, be reserved until
7 the time of trial.)

8 ---
9 . . . ROD SUTTON, having been duly
10 sworn, as a witness, was examined and
11 testified as follows . . .

12 ---
13 EXAMINATION

14 ---
15 BY MR. DROOGAN:

16 Q. Sir, my name is Mike Droogan. I
17 represent Speedway in this lawsuit that you've
18 brought against them. And we're going to take
19 your deposition. Have you ever given a deposition
20 before today?

21 A. I haven't.

22 Q. Have not?

23 A. I have not.

24 Q. Have you ever testified under oath

1 before today?

2 A. I have when I was a vice-president
3 in the Philadelphia School District.

4 Q. So I'm not sure what the setting
5 was when you testified under oath. But if it was
6 recorded testimony, and that's what we're doing
7 today --

8 A. Okay.

9 Q. -- there's a court reporter who's
10 seated to your left and to my right. I think he's
11 the most talented stenographer ever. But there's
12 a few things that he's allowed to do and a few
13 things that he's not allowed to do.

14 A. Okay.

15 Q. And I want to review them with you.

16 A. Right.

17 Q. What he's allowed to do is
18 administer an oath. And that would be the same
19 oath that you would get in a court of law. And
20 what he's not allowed to do is he's not allowed to
21 interpret nods of the head or shrugs of the
22 shoulder. So if it becomes human nature that you
23 nod your head to give a response and Mr. Diamond
24 interrupts, and he's not being rude. He just

1 needs to make sure you give a verbal response.

2 A. Okay.

3 Q. In addition, when you use the
4 response uh-huh or un-unh, it kind of works at
5 home. But it doesn't work at a deposition because
6 as talented he is he's not allowed to interpret
7 that even if he knows that it means yes or no.

8 Fair enough?

9 A. Yes.

10 Q. During the course of any
11 deposition, I'm sure Mr. Fox has told you, if
12 there's a question you don't understand, let us
13 know.

14 A. Yes.

15 Q. If there is something that you'd
16 like me to rephrase, repeat, state differently,
17 I'll be glad to do it.

18 A. Yes, sir.

19 Q. If you give a response to a
20 question, we're going to presume that you
21 understood the question. And then it's going to
22 be transcribed in a booklet form by the court
23 reporter. And it will have use at various times
24 in this lawsuit. So if at any time I ask you

1 something that is confusing, raise your hand and
2 say, I don't understand what you're asking. To
3 the extent I ask you to give an estimate of
4 distances or time and you can give just that, an
5 estimate, that's a good answer.

6 A. Uh-huh.

7 Q. However --

8 MR. FOX: You're doing exactly what
9 he told you not to do, don't uh-huh.

10 THE WITNESS: Yes.

11 BY MR. DROOGAN:

12 Q. See, the way we do it is we let
13 your lawyer interrupt you first and then we let
14 Mr. Diamond interrupt you second. And if I ask
15 you a question that you don't understand, just
16 tell me. And we're going to repeat the question
17 and at least give you the best shot at doing it.
18 If it is an estimate and you're telling me, I
19 estimate the distance was two feet, that's fine.
20 If you tell me it's a guess, then tell us it's a
21 guess. Because if it's a guess, then it's not a
22 good response. And I'll try and work around the
23 response that you give that you say is a guess so
24 we can try and get your best estimate.

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Page 11

1 A. I understand.

2 Q. That may be a little bit convoluted
3 at the outset of the deposition, but certainly it
4 may come up during the course of testimony.

5 A. I understand.

6 Q. We asked you to bring some
7 documents with today. And I'm going to mark the
8 first exhibit as Sutton-1, which is the Notice of
9 Deposition. I just want to see if you have any of
10 these documents. And if you do, you've either
11 produced them or you have them at home and we're
12 going to talk about that.

13 A. I did forget the sneakers.

14 MR. FOX: Did you forget the
15 sneakers?

16 THE WITNESS: I forgot the sneakers
17 this morning.

18 MR. FOX: I did ask him to bring
19 the sneaks.

20 THE WITNESS: He did ask me to
21 bring them. The sneakers are on my bed,
22 but I forgot them.

23 MR. DROOGAN: Mark this as
24 Sutton-1, please.

1 A. It is.

2 Q. Is your first name Rodney or is
3 your God-given name Rod or birth name is Rod?

4 A. My birth name is Rod.

5 Q. And Slap -- when you were born,
6 what does it say on your birth certificate; if you
7 know?

8 A. My name was Rod Slappy. And then I
9 was adopted by my stepfather who is David Sutton.
10 And at that point my name was changed to Rod
11 Slappy Sutton.

12 Q. And then when you are at work, what
13 are you known as, Rod Sutton or Rod Slappy Sutton?

14 A. Rod Sutton.

15 Q. Is it okay if I call you Mr. Sutton
16 today?

17 A. That is okay.

18 Q. Mr. Sutton, we asked you to bring
19 along the originals of any photographs that you
20 possess of the Speedway store.

21 Do you have any of those?

22 THE WITNESS: Do we have those,
23 John?

24 MR. FOX: The originals were sent

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1 - - -

2 (Whereupon, Exhibit Sutton-1 was
3 marked for identification.)

4 - - -

5 MR. DROOGAN: On the topic of
6 exhibits, may I have your phone, Mr.
7 Diamond?

8 We're going to mark as Exhibit
9 Sutton-2 a photograph of Mr. Sutton.

10 - - -

11 (Whereupon, Exhibit Sutton-2 was
12 marked for identification.)

13 - - -

14 MR. DROOGAN: Thank you. Mr.
15 Diamond will append that photograph to
16 the document, to the transcript.

17 BY MR. DROOGAN:

18 Q. There were a few things we asked
19 you to bring along if you did possess them.

20 And before I touch on those, the
21 lawsuit the way it's filed identifies you as Rod
22 Slappy Sutton?

23 A. Yes.

24 Q. Is that your full name?

1 to you by -- when we produced them. The
2 original photos that I received were
3 sent, forwarded to you. So you should
4 have the original photos.

5 MR. DROOGAN: I don't have any
6 photos.

7 MR. FOX: They were part of the
8 self-executing disclosure.

9 MR. DROOGAN: Photos of the store?

10 MR. FOX: Yes.

11 MR. DROOGAN: I'll double check.

12 MR. FOX: I have them. But they
13 were part of the production. That's why
14 I didn't bring it because I thought you
15 already had it.

16 MR. DROOGAN: Off the record.

17 - - -

18 (Whereupon, a discussion took place
19 off the stenographic record.)

20 - - -

21 BY MR. DROOGAN:

22 Q. Mr. Sutton, there are photographs
23 that your counsel was kind enough to show me that
24 show the Speedway store. Were they taken by you?

Page 13

1 A. I'm not sure. There were some
2 photos taken by my wife. I'm not sure if those
3 are the photos in evidence that were taken by my
4 wife.
5 Q. Did you take photos of the store?
6 A. I did not.
7 Q. Do you know when your wife took the
8 photos?
9 A. I don't know exactly.
10 Approximately a week and a half after the incident
11 took place.
12 Q. Do you know of any other photos
13 other than those that are in front of your counsel
14 now? And those aren't all of them.
15 A. I do not.
16 Q. Were there any photos taken on the
17 evening of the incident?
18 A. Not of my recollection.
19 Q. Number 2 asks you to bring the
20 shoes that you were wearing when you fell.
21 And you say you do have the
22 sneakers?
23 A. I do have the sneakers that I wore
24 when I fell. I did not bring them today.

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1 Q. What I'd like you to do, if we
2 could make them available to your counsel?
3 A. Yes.
4 Q. And I'll go to his office and take
5 a look at them after the deposition.
6 A. Yes.
7 Q. What kind of sneaks are they?
8 A. They are Nike high-top basketball
9 sneakers.
10 Q. Do you know the approximate age of
11 them?
12 A. I do not.
13 Q. Are they your go-to high-tops? Are
14 they the ones you wear in inclement weather? How
15 would you describe them?
16 A. They're just a regular everyday
17 pair of sneakers that I wear when I dress
18 casually.
19 Q. Do you still wear them?
20 A. Sometimes.
21 Q. Is there much wear on them since
22 January of 2016?
23 A. I can't determine the amount of
24 wear. They're not as new as they were when I

Page 15

1 first brought them.
2 Q. And your best estimate of when you
3 purchased them?
4 A. Oh, maybe 2015, two thousand and
5 the summer of '15.
6 Q. Do you have any receipts from your
7 purchase at the Speedway store that night?
8 A. I do not.
9 Q. Did you pay with cash or a bank
10 card, credit card type of thing?
11 A. I used my bank card.
12 Q. I know your counsel had indicated
13 at one point that you were going to search your
14 bank card to see if you had that transaction on
15 it. Have you done that?
16 MR. FOX: We produced that.
17 MR. DROOGAN: Oh, you did?
18 MR. FOX: Yes, there was a
19 transaction on it.
20 MR. DROOGAN: That's right, I did
21 remember seeing that. I'm sorry.
22 BY MR. DROOGAN:
23 Q. We had asked for any other
24 transactions at the Speedway store.

Page 16

1 A. I had none.
2 Q. None?
3 A. None that I could find in my
4 records.
5 Q. Did you have a cellphone with you
6 that evening?
7 A. I did.
8 Q. And do you have a cellphone bill
9 for that period of time, for January 16th of 2016?
10 A. I have a cellphone bill, but I
11 don't have it with me today.
12 Q. When was the last time you looked
13 at that bill?
14 A. My cellphone bill, in general, sir?
15 Q. That particular bill for January of
16 2016.
17 A. I believe my wife might have looked
18 at it when that bill became due in February of
19 2016.
20 Q. Did you ever look at it to see the
21 calls you made on January 19th of 2016?
22 A. I did not.
23 Q. Do you know if there were any calls
24 attributable to you on that bill for the evening

Page 17

1 of January 19th of 2016?

2 A. No, there is not.

3 Q. What is your cellphone number, sir?

4 A. (267) 231-1559.

5 Q. 1559?

6 A. Uh-huh.

7 Q. We asked you to bring with any
8 e-mail messages to you -- to anyone but your
9 attorney or his firm regarding the incident.

10 Do you have any?

11 A. I have none. I have no e-mail
12 messages regarding the incident.

13 Q. We asked you, to the extent you're
14 able, to bring with any text messages to anyone
15 but your attorney regarding the incident.

16 A. I have no text messages regarding
17 the accident.

18 Q. We asked you to bring with your
19 Pennsylvania Driver's License.

20 A. I do have my Pennsylvania Driver's
21 License. Would like me to give you a copy?

22 Q. Please.

23 MR. DROOGAN: I'll get a copy of
24 this. Mr. Diamond, we'll mark this as

Page 19

1 is with Mr. Diamond's phone we'll take a
2 photograph of it and mark it and append
3 it to the deposition, please.

4 THE WITNESS: Uh-huh.

5 ---

6 (Whereupon, Exhibit Sutton-4 was
7 marked for identification.)

8 ---

9 BY MR. DROOGAN:

10 Q. Are you a Yankees fan?

11 A. I grew up watching the Yankees.

12 Q. If you look right now at his phone
13 you now have the Yankees on your phone.

14 A. I'm the Bucky Dent, Chris
15 Chambliss, Graig Nettles, Willie Randolph, Reggie
16 Jackson and, of course, Billy Martin. So I grew
17 up in that area and those are my guys. I still
18 remember Bucky Dent's hit over the Big Green
19 Monster.

20 Q. You and him may want to spend a few
21 hours after this over a beer.

22 A. Catfish Hunter, I know them all,
23 Thurmon Munson. I'm still mourning his death.

24 Q. When was the last time you used

Page 18

1 3.

2 ---

3 (Whereupon, a discussion took place
4 off the stenographic record.)

5 ---

6 (Whereupon, Exhibit Sutton-3 was
7 marked for identification.)

8 ---

9 BY MR. DROOGAN:

10 Q. Do you have the cellphone that you
11 had with you?

12 A. I have my cellphone.

13 Q. May I see it, please?

14 A. (Witness complies.)

15 Q. And it's a Samsung?

16 A. Uh-huh.

17 MR. FOX: That's a yes?

18 THE WITNESS: Yes.

19 BY MR. DROOGAN:

20 Q. Is that the same phone that you had
21 that evening?

22 A. It's the same phone I had that
23 evening.

24 MR. DROOGAN: What I'd like to do

Page 20

1 that phone before 6:40 p.m. on January 19th of
2 2016?

3 A. I'm not sure, counselor. I
4 normally use it to contact my wife. I might have
5 used it hours prior to that incident to coordinate
6 with my wife going to a basketball game to see my
7 son. If I used it at all I used it to coordinate
8 a trip to the basketball game that evening.

9 Q. What is your wife's number?

10 A. (267) 205-6987.

11 Q. And what provider do you have for
12 the coverage, the cellphone?

13 A. The same provider.

14 Q. Verizon?

15 A. No. T-Mobile.

16 Q. I saw in some records that you at
17 one point worked for the School District of
18 Philadelphia and then you moved to the Ferris
19 School in Delaware?

20 A. Yes.

21 Q. Was that before or after January
22 19th of 2016?

23 A. That was before January 19, 2016.

24 Q. Since January 19th of 2016, have

Page 21

1 you sought employment anywhere else?

2 A. I have not.

3 Q. Have you applied for Social
4 Security Disability benefits?

5 A. No.

6 Q. I asked you to bring with receipts
7 of any vacations or family trips that you and your
8 family have taken since January 2016.

9 A. I haven't taken any.

10 Q. Do you, yourself, have the disks or
11 the CDs of the studies done of your knee, whether
12 they be MRIs or x-rays, CAT scans?

13 A. I don't recall. I don't recall.
14 I'm not sure.

15 Q. Do you have any of your -- not so
16 much after this incident, but any imaging studies
17 of your knees?

18 A. I do not.

19 Q. We asked you to bring with any
20 documents concerning FMLA leave that you may have
21 received after January 19th of 2016.

22 Do you have those?

23 A. I do not have those documents.

24 Q. Did you get FMLA leave?

Page 22

1 A. I did.

2 Q. I asked you to bring with any
3 membership cards for any gym or fitness sister,
4 whether it be a YMCA, Planet Fitness, LA Fitness
5 or your employer. Do you have any of those?

6 A. I do not have cards. The fitness
7 is digital. It's online.

8 Q. Do you have a scanner, a card that
9 you scan?

10 A. No. When you go into the gym they
11 just ask you for your membership number and they
12 put it into a machine.

13 Q. What gym is that?

14 A. That's Fitness 19 in Elkins Park.

15 Q. What street is that located on?

16 A. Old York Road.

17 Q. How long have you been a member
18 there?

19 A. I estimate about three years.

20 Q. Do you belong to any other gyms or
21 fitness centers?

22 A. I do not.

23 Q. What is your date of birth?

24 A. September the 11th of 1966.

Page 23

1 Q. The last four digits of your Social
2 Security Number, are they 3025?

3 A. Yes, they are.

4 MR. DROOGAN: Off the record,
5 please.

6 ---

7 (Whereupon, a discussion took place
8 off the stenographic record.)

9 ---

10 MR. DROOGAN: On the record.

11 We've confirmed off the record that
12 the first five digits of Mr. Sutton's
13 Social Security Number are accurate as
14 presented by his counsel with the
15 Discovery Responses.

16 BY MR. DROOGAN:

17 Q. Your wife is Jean Sutton?

18 A. Jean McKee Sutton.

19 Q. And you have at least two children?

20 A. Three children.

21 Q. Three children. Alexander
22 according to the Discovery Responses is 14?

23 A. Fifteen now.

24 Q. Justin is how old now?

Page 24

1 A. Nineteen now.

2 Q. And your other child?

3 A. Paige is 21.

4 Q. And there was also a name of Kevin
5 Craig, EMT, listed in your responses as a
6 potential witness. Do you know Kevin Craig?

7 A. I do not.

8 Q. Which of your sons was with you on
9 the evening of the incident?

10 A. Alexander Sutton, the 15-year-old.

11 Q. Was Justin living at home at the
12 time?

13 A. He was.

14 Q. Is he now?

15 A. He is not.

16 Q. Where is he?

17 A. At Elizabethtown College.

18 Q. And how about Paige, was she living
19 at home at the time?

20 A. She was at home. She was on fall
21 break.

22 Q. And where does she attend school?

23 A. Albright College.

24 Q. And what school does Alexander go

Page 25

1 to?

2 A. He currently goes to the Anderson
3 School in Norristown, Pennsylvania.4 Q. And what do they specialize in at
5 the Anderson School?6 A. It's a school for emotionally
7 disturbed children.8 Q. I had asked for the potential
9 deposition of your son, Alexander. And your
10 counsel informed me that he may not be able to
11 undergo a procedure like this.

12 A. Yes.

13 Q. Can you explain why not?

14 A. Alex is an emotionally disturbed
15 child. And a procedure like this would trigger
16 him to maybe put him into crisis. And we would
17 not want to put him into crisis.18 Q. Have you had a chance to view the
19 security video from that evening?20 A. I've looked at frames of the video,
21 yes.22 Q. And he was with you as you were
23 leaving the store?

24 A. Yes, he was.

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1 anywhere?

2 A. I do not know.

3 Q. Did he ever question you, hey, dad,
4 how is it you fell that night?

5 A. He has not.

6 Q. Did he have any problems with his
7 footing that evening at the store?8 A. I do not recollect. I went out the
9 door first.10 Q. That would be on the way in or the
11 way out?

12 A. On the way out.

13 Q. On the way in did he have any
14 problems?15 A. I do not recollect. I do not think
16 so.

17 Q. Where do you live, sir?

18 A. I live 5 Lanfair Road, Cheltenham,
19 PA.

20 Q. How long have you lived there?

21 A. Twenty years.

22 Q. Do you own any other property?

23 A. I do not.

24 Q. Do you live anywhere else during

Page 26

1 Q. Does he know that you fell that
2 night?

3 A. Yes, he did. Yes, he does.

4 Q. Did he say anything to you about
5 the fall or why it happened or how it happened or
6 what he observed?7 A. Do you mean the night of the
8 accident?

9 Q. That's a good qualifier.

10 The night of the accident, did he
11 say anything?12 A. He did not. He went to get my wife
13 out of the car.14 Q. When you were standing around and
15 you were on the ground and he was standing there
16 until the ambulance arrived, did he say anything
17 about how the incident happened?18 A. He spoke to my wife. I do not
19 recollect what they talked about.20 Q. How about since the evening of the
21 incident, has he discussed anything with you about
22 what his observations were of the event?

23 A. He has not.

24 Q. Has he ever written it down

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1 the course of the year; that is, a rental property
2 or a vacation property, anywhere else?

3 A. I do not.

4 Q. Where did you go to high school?

5 A. Saint Benedict's Preparatory School
6 in Newark, New Jersey.

7 Q. Where are you from originally?

8 A. Newark, New Jersey.

9 Q. Where did you go to college?

10 A. Franklin & Marshall College in
11 Lancaster, Pennsylvania.

12 Q. You're a Diplomat?

13 A. I'm a Diplomat.

14 Q. I'm a Bullet.

15 MR. FOX: A what?

16 THE WITNESS: That is --

17 MR. DROOGAN: Gettysburg.

18 THE WITNESS: -- Gettysburg, yes,
19 sir.

20 BY MR. DROOGAN:

21 Q. They said we were rivals back then.

22 Did you play sports at F & M?

23 A. I played my freshman year.

24 Q. What sport?

Page 29

1 A. I played basketball.
 2 Q. Did you go on to graduate school?
 3 A. I did.
 4 Q. Where did you attend graduate
 5 school?
 6 A. Eastern University.
 7 Q. And what degree did you obtain?
 8 A. A Master's in Education.
 9 Q. Approximately when did you receive
 10 that degree?
 11 A. December 20, 2005.
 12 Q. And what year did you graduate from
 13 F & M?
 14 A. July 1988.
 15 Q. So at F & M you were part of the
 16 basketball team your freshman year?
 17 A. My freshman year.
 18 Q. After that did you play the
 19 intramurals?
 20 A. I did.
 21 Q. Intramural basketball?
 22 A. I did, yes.
 23 Q. Through your senior year?
 24 A. Off and on, yes.

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1 Q. Did you play any other intramural
 2 sports?
 3 A. I did not.
 4 Q. At Eastern University, did you
 5 participate in any of their athletics?
 6 A. I did not.
 7 Q. Were you ever injured playing
 8 basketball before June 19th of 2016?
 9 A. I was.
 10 Q. And when was that injury or how
 11 what did you injure yourself?
 12 A. I injured myself July 1999 in
 13 Ambler, Pennsylvania playing a pickup basketball
 14 game with students.
 15 Q. At the Y?
 16 A. No. At the Temple Ambler Campus
 17 where I was having a summer course, teaching a
 18 high school summer course.
 19 Q. Were you employed by Temple at the
 20 time?
 21 A. No. I was employed by Philadelphia
 22 Futures as a consultant and a teacher.
 23 Q. And what kind of injury did you
 24 have?

Page 31

1 A. I ruptured my left patella tendon.
 2 Q. Did you make a claim for that; that
 3 is, did you make a claim against the Temple Ambler
 4 Campus?
 5 A. I did not.
 6 Q. Was that covered by Workers'
 7 Compensation?
 8 A. I was -- it was covered by my
 9 insurance from the School District of
 10 Philadelphia.
 11 Q. Who performed the surgery?
 12 A. Dr. Chollack, C-h-o-l-l-a-c-k. I
 13 forget his first name.
 14 Q. At Chestnut Hill Hospital?
 15 A. Chestnut Hill Hospital.
 16 Q. What procedure did he perform?
 17 A. He repaired my left patella tendon.
 18 Q. Is that what was done to your left
 19 patellar tendon after this incident, a repair
 20 done?
 21 A. I don't understand your question.
 22 Q. Was your left patellar tendon
 23 injured in this incident, the one at the Hess
 24 store, the Speedway store?

Page 32

1 A. Yes.
 2 Q. Was it repaired?
 3 A. Yes.
 4 Q. Was it the same procedure that Dr.
 5 Chollack did?
 6 A. I believe so.
 7 Q. In connection with your treatment
 8 for the injuries from the Hess -- from the
 9 Speedway incident, did your physicians ever obtain
 10 Dr. Chollack's records?
 11 A. I believe that they did. I am not
 12 sure.
 13 Q. Which doctor do you believe
 14 obtained those?
 15 A. Dr. Wang.
 16 Q. Who is he affiliated with?
 17 A. Lansdale Hospital and Rothman
 18 Institute. I think it was Rothman Institute.
 19 Q. Why do you think that Dr. Wang got
 20 a hold of those records?
 21 A. Because he was the main surgeon
 22 that treated me throughout the injury.
 23 Q. Did he ever make any comparisons
 24 for you to the 1999 injury and the 2016 injury --

A. Not that I recall.

Q. -- to your left patellar tendon?

A. Not that I recall.

Q. Were you ever in his company when he put an MRI film up and said that is what happened to you in '99 and this is what happened to you in 2016, something to that effect where he compared the two studies?

A. No, I don't recall him giving me that analysis.

Q. Has any doctor that you've seen since January 19th of 2016, has any doctor compared the two injuries; that is, the 1999 injury to your left knee and the 2016 injury to your left knee?

A. No, they have not.

Q. For what period of time -- strike that question.

Give me an idea of how long you treated after the 1999 injury.

A. I was in a straight leg cast for 90 days. Then I treated -- I recall, it's been a long time ago, but to the best of my recollection, I think I treated for about three or four months

Q. And what recreational activity did you return to after you felt you were fully recovered, was it jogging or was it basketball, was it full-court basketball, half-court?

A. It was jogging as a consistent form of exercise. And I was able to play basketball casually.

Q. Between that period of time when you resumed playing basketball casually, was there a time where you were able to resume full-court basketball 100 percent Rod Sutton?

A. In my opinion, no.

Q. And why was that?

A. Not -- because it was my age then. I wasn't the 18-year-old power forward at Saint Benedict's. I was a 34-year-old man.

Q. So to a certain extent you hung up your basketball shoes after that.

Did you ever belong to a gym in the three years or so -- three years before this incident, did you belong to a gym where you played pickup basketball at all?

A. I belong to a gym. I belong to the YMCA. I never played pickup basketball regularly.

after they took off the hard cast.

Q. Where did you receive your treatment after that? Chollack did the surgery and then he did the follow-up. And where did you go for your physical therapy?

A. Dynamic Rehab.

Q. Where's that located?

A. In Elkins Park.

Q. And you had about three months of physical therapy, you think?

A. I think about. I'm not sure.

Q. How long was it until you were cleared to run after that incident?

A. I was -- I believe, and again it's been over 20 years, but I believe that it was after my rehab from Dynamic. I am unclear of the circumstances around it, though.

Q. Did there come a point in time where you felt, in your mind, that you had made a full recovery from the 1999 injury?

A. Yes.

Q. Approximately when did you feel you were fully recovered?

A. About a year after it happened.

I mostly went to the gym to work out and to compensate my running to keep my diabetes under control.

Q. Did you take up any other sports after the 1999 injury to your left knee?

A. I did not, except running. I ran a lot, if that's a sport.

Q. Did you participate in any runs during the course of the year, like the Broad Street Run --

A. No. I just ran independently.

MR. FOX: Let him finish the question.

BY MR. DROOGAN:

Q. After the period of time when you were able to resume jogging and then running, did you ever have any periods of time where you could not do that because of your left knee?

A. No.

Q. In other words, a flare-up or an aggravation?

A. No.

Q. So from basically sometime in 2000, maybe 2001, you had started running again, and

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1 that was your form of exercise up until 2016?

2 A. Yes.

3 Q. You mentioned the YMCA.

4 Did you belong to the YMCA before
5 this incident?

6 A. Before the incident of 2016?

7 Q. Yes. Yes, sir.

8 A. Yes.

9 Q. And which YMCA?

10 A. The one in Abington.

11 Q. Do you still belong there?

12 A. I do not.

13 MR. DROOGAN: Off the record.

14 - - -

15 (Whereupon, a discussion took place
16 off the stenographic record.)

17 - - -

18 (Whereupon, a pertinent portion of
19 the record was read back by the court
20 reporter.)

21 - - -

22 BY MR. DROOGAN:

23 Q. When did you stop at the YMCA?

24 A. I don't recall the exact date, but

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1 A. I finished the principal

2 certification study in September of 2008.

3 Q. After the principal certification,
4 did you have any further education?

5 A. No. I stopped there.

6 Q. For how many years did you work for
7 the School District of Philadelphia?

8 A. Fourteen and a half.

9 Q. It appears from documents your
10 attorney provided us that the last few years you
11 worked for the School District of Philadelphia you
12 were a principal?

13 A. Vice-president.

14 Q. At what school did you last work
15 for the School District of Philadelphia?

16 A. University City High School.

17 Q. How many years were you there?

18 A. Five.

19 Q. And why did you leave the School
20 District of Philadelphia?

21 A. I was laid off due to budget
22 restrictions.

23 Q. Were you a member of the union?

24 A. I was.

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1 I can't recall, sir.

2 Q. Was it before the incident, before
3 January 19th of 2016?

4 A. Yes, yes, it was before then.

5 Q. Why did you stop your membership at
6 the Y?

7 A. I joined a gym closer to my home.

8 Q. They didn't call them scholarships
9 at Gettysburg. I don't know what they called them
10 at F & M. But were you on scholarship for
11 basketball?

12 A. No. I had what they call a grant.

13 Q. You were recruited there to play?
14 Were you recruited there to play?

15 A. I was asked to come and play by the
16 coach, yes.

17 Q. We talked about your Master's
18 Degree that you received in 2005 from Eastern.

19 Did you have any education after
20 that?

21 A. Yes. After that I went to get my
22 principal certification also at Eastern
23 University.

24 Q. When was that?

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1 Q. Did you contest the layoff?

2 A. The union contested the layoff as a
3 collection -- collective bargaining piece. Yes, I
4 was part of that collective bargaining.

5 Q. It was more than you that they
6 performed that collective bargaining appeal?

7 A. Yes. They laid off all of the
8 vice-principals, most of them due to budget
9 restraints.

10 Q. Had there not been layoffs, were
11 you planning to stay with the School District?

12 A. Yes, I would have stayed with the
13 School District of Philadelphia.

14 Q. What is your role at the Ferris
15 School?

16 A. I am the principal.

17 MR. DROOGAN: Off the record.

18 - - -

19 (Whereupon, a discussion took place
20 off the stenographic record.)

21 - - -

22 MR. DROOGAN: Back on the record.

23 We've confirmed amongst counsel
24 that there is only a claim for past

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1 wages, not future loss of earnings in
2 this matter. Agreed?

3 MR. FOX: Agreed.

4 BY MR. DROOGAN:

5 Q. How long were you out of work after
6 the incident?

7 A. Approximately five months.

8 Q. Were you paid during any of that
9 period of time?

10 A. Yes, I was paid short-term
11 disability.

12 Q. Through whom did you have that?

13 A. The Hartford.

14 Q. Was that a policy of yours that you
15 had or was that through the School District?

16 A. That was through the State
17 Department.

18 Q. I said the wrong word. Let me back
19 up. Was that a policy that you had on your own or
20 was that through the State of Delaware?

21 A. That was through my employer, the
22 State of Delaware.

23 Q. What percentage of your salary did
24 the short-term disability cover?

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1 A. Approximately 75 percent.

2 Q. Did you ever make up the 25 percent
3 delta?

4 A. I did not.

5 Q. Do you know whether The Hartford
6 has a lien on any amount of money you may recover
7 in this action, if that ever happens?

8 A. I do not know that.

9 Q. When did you last receive any
10 correspondence from The Hartford relative to the
11 short-term disability?

12 A. Approximately the third week of
13 May, right before my back-to-work date on May
14 31st. I think a week prior to my back-to-work
15 date on May 31st was the last time I had contact
16 with The Hartford.

17 Q. And what was the substance of that
18 correspondence?

19 A. To determine and confirm my
20 back-to-work date and the decision for my doctor
21 about when my back-to-work date.

22 Q. Did you work with a nurse from The
23 Hartford on your rehabilitation? In other words,
24 were you dealing with a nurse who would check up

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1 with your doctors or with your therapist to
2 determine when it was you were going to be coming
3 back to work?

4 A. I do not think so, sir.

5 Q. Do you recall what your annual
6 salary was in 2016, was it by school year or by
7 year?

8 A. It's by fiscal year.

9 Q. Fiscal year?

10 A. Uh-huh.

11 Q. So June to June or whatever their
12 year fiscal is?

13 A. Yeah. And I think the State of
14 Delaware -- I believe the State of Delaware's
15 fiscal year is from January to December.

16 Q. 2016, do you know approximately
17 what your salary was?

18 A. It was \$75,801. I just did my
19 taxes.

20 Q. And do you know what you earned
21 from the State of Delaware in 2016, what your
22 earnings were?

23 A. Didn't I just answer that question?

24 Q. They paid you that amount?

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1 A. That's what was on my W-2.

2 Q. What were -- you weren't paid when
3 you were out of work; correct?

4 A. Yeah. So you want to know what my
5 salary was?

6 Q. Yes.

7 A. My salary for the State of Delaware
8 is 88,000, \$88,000.

9 Q. And they paid you 75 and a little
10 bit more?

11 A. Yes.

12 Q. Did you receive actual hardcopy
13 papers from The Hartford or was it electronic?

14 A. It was primarily electronic.

15 Q. Do you still have it?

16 A. I do not because the documents were
17 sent from the insurance company to my doctor.

18 Q. When they dealt with you, did they
19 deal with you by e-mail or by paper?

20 A. They dealt with me by phone.

21 Q. Did they ever send you any letters
22 or any correspondence?

23 A. Just one correspondence telling me
24 that my short-term disability was approved.

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1 Q. Did you receive any other type of
2 income other than the short-term disability? And
3 I'm calling it income, but money coming in during
4 the period of time between January 19th of 2016
5 and May 30th of 2016?

6 A. No, I did not.

7 Q. Does your wife work outside the
8 house?

9 A. Yes.

10 Q. Where does she work?

11 A. Currently she works for Nationwide
12 Insurance.

13 Q. What does she do for Nationwide?

14 A. She's the attorney negotiator.

15 Q. Does she have a law degree?

16 A. She does not.

17 Q. Out of what office does she work?

18 A. Harleysville, Pennsylvania.

19 Q. How long has she been with them,
20 approximately?

21 A. Her one-year anniversary was this
22 year, one year.

23 Q. Where did she work at the time of
24 the incident?

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1 Q. Did your wife lose any time from
2 work at Northeast Building Products as a result of
3 this incident?

4 A. I don't recall. I was in the
5 hospital and I was in the rehab center. I don't
6 know if she had to call out to do various things
7 for me. I don't recall. I'm not sure.

8 Q. Your counsel provided to us
9 photographs of you with leg braces on each leg?

10 A. Uh-huh.

11 Q. And one photograph that appeared to
12 be of a room in your home?

13 A. Uh-huh.

14 Q. How long did you wear the leg
15 braces after you got home?

16 A. I had to wear the leg braces for
17 four months.

18 Q. Twenty-four hours a day?

19 A. Yes, except when I was laying in
20 bed.

21 Q. So waking hours you had to wear
22 them?

23 A. Yes.

24 Q. To get into bed then could you take

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1 A. At the time of the incident she
2 worked for Northeast Building Products.

3 Q. In Port Richmond?

4 A. Yes.

5 Q. What did she do for them?

6 A. She was an HR assistant.

7 Q. How long was she there?

8 A. Approximately six months.

9 Q. And before that, where was her
10 employment?

11 A. She worked for Fireside Partners in
12 Delaware.

13 Q. Was your wife ever in the insurance
14 business before this incident, before January 19th
15 of 2016?

16 A. Yes, she was.

17 Q. For whom did she work?

18 A. She worked for Unitrin Direct
19 Insurance.

20 Q. What kind of insurance is that?

21 A. Car insurance.

22 Q. Approximately when did she work for
23 Unitrin?

24 A. From approximately 1998 to 2008.

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1 them off and get into bed or did you have to take
2 them off --

3 A. I couldn't move at all without the
4 braces.

5 Q. So once you got in bed you took the
6 braces off?

7 A. And before I could get out I had to
8 put them back on.

9 Q. You look like you go at least two
10 bills. Who you got you in and out of bed?

11 A. They got me a hospital bed. And
12 that was the only way I could come home from the
13 nursing center was if I got a hospital bed. And
14 using a hospital bed I was able to put my weight
15 up and down and swing my legs over. And my wife
16 would help me with the braces on.

17 Q. So you could get yourself into and
18 out of the bed using the hospital bed?

19 A. Well, yeah, I could swing my legs
20 over. I still needed help with my legs. But my
21 weight was able to go up and down with the
22 hospital bed.

23 Q. Do you still have the hospital bed?

24 A. I do not.

1 Q. And do you have any plans to leave
2 the Ferris School?

3 A. I do not.

4 Q. Other than being the principal, are
5 you involved in any of the other activities that
6 sometimes I see principals involved in, and that
7 is coaching sports?

8 A. I do not coach sports.

9 Q. How about robotics or any other --

10 A. No. I just supervise the entire
11 instructional program, the teachers and the
12 teachers in it.

13 Q. What is your workday like now?

14 A. I arrive at work at 7:30. And most
15 days I leave between 4:30 and 5:00 if I'm lucky.

16 Q. And you drive to work?

17 A. I drive to work.

18 Q. Do you have any difficulty driving
19 to work?

20 A. I do experience pain unevenly
21 sometimes when I drive to work in my knees, yes.

22 Q. Both knees or just one?

23 A. Sometimes one, sometimes both.

24 Q. How often does that occur?

1 A. No, I have not.

2 Q. After you injured your left knee in
3 1999, did you suffer any other knee injuries
4 between that event and January 19th of 2016?

5 A. No, I have not.

6 Q. When was the last time you were
7 seen in an emergency room before January 19th of
8 2016?

9 A. I believe in July of 2013, I
10 believe. I know it was, I believe, for an
11 infected tooth. I'm not sure, sir, of the exact
12 date and the exact incident. I believe it was for
13 an infected tooth.

14 Q. Since this incident, have you been
15 hospitalized at all; that is, not for your knees,
16 but for any other reason?

17 A. No.

18 Q. How about x-rays, when was the last
19 time you were x-rayed for any reason before
20 January of 2016? And I'm not talking about
21 dentists. Your body?

22 A. I don't recall, sir. I don't
23 remember exactly.

24 Q. Did you have a family doctor in

1 A. It occurs less so now, but still if
2 I'm in the car for an extended period of time I
3 experience stiffness and pain.

4 Q. And your drive is approximately how
5 long?

6 A. An hour.

7 Q. We're currently involved in a
8 lawsuit in the civil system.

9 Have you ever been involved in any
10 other lawsuits other than this?

11 A. No, I have not.

12 Q. Have you ever filed a Workers'
13 Compensation claim?

14 A. No, I have not.

15 Q. Have you ever been in the military?

16 A. No, I have not.

17 Q. This is the civil side of the
18 docket. Have you ever been charged with a crime
19 that deals with truth or falsity?

20 A. No, I have not.

21 Q. Before this incident, did you ever
22 make an insurance claim; that is, it wasn't a
23 lawsuit, but you made a claim against somebody's
24 insurance company for injuries?

1 January of 2016?

2 A. Yes.

3 Q. Who was that?

4 A. Nicole Davis.

5 Q. When had you last seen Dr. Davis
6 before January of 2016?

7 A. I saw Dr. Davis in July of 2015 to
8 get my annual diabetic checkup or every six-month
9 checkup.

10 Q. Does the State of Delaware require
11 you to have an annual physical for your job?

12 A. No, it does not.

13 Q. Do you undergo an annual physical
14 yourself?

15 A. Yes, I do.

16 Q. And is it July of '15, is that
17 about the anniversary for your physical?

18 A. Every six months to a year I have
19 to get a diabetic checkup and a blood pressure
20 checkup.

21 Q. Your diabetes, is it type one or
22 two?

23 A. Two.

24 Q. And how do you control it?

1 A. Running and Metformin, two pills.
 2 Q. Each day?
 3 A. Yes.
 4 Q. Does your diabetes ever affect your
 5 ability to walk?
 6 A. No.
 7 Q. Does it ever affect your balance?
 8 A. No.
 9 Q. Does it ever affect your vision?
 10 A. No. I'm controlled.
 11 Q. Does it have -- strike that
 12 question.
 13 Do you have any side effects from
 14 the diabetes?
 15 A. I do not. I'm under excellent
 16 control as per my doctor.
 17 Q. Do you see any other doctors other
 18 than Dr. Davis? She treats you for the diabetes
 19 and monitors you. Do you go to any other doctors?
 20 A. I see Dr. Daniels for my prostate
 21 checkups.
 22 Q. Any other doctors?
 23 A. I see Dr. -- and I forget his name,
 24 but I go to Chestnut Hill Podiatry for my diabetic

1 foot care.
 2 Q. Tell me about that. What diabetic
 3 foot care do you undergo?
 4 A. As part of my yearly diabetic
 5 treatment I have to also get my feet checked as
 6 well, and I go to the Chestnut Hill Podiatry to
 7 get that done.
 8 Q. For what period of time have you
 9 been doing that?
 10 A. Ever since I've been maintaining my
 11 diabetes since I've been 33 years old.
 12 Q. And has the diabetic foot center
 13 ever diagnosed you with any problems; that is, did
 14 they ever provide you with a diagnosis that you
 15 have anything going on with you?
 16 A. Un-unh.
 17 MR. FOX: That's a no?
 18 THE WITNESS: That's a no, yes.
 19 BY MR. DROOGAN:
 20 Q. Are there any other doctors that
 21 you see?
 22 A. No.
 23 Q. And you said the diabetic foot care
 24 is Chestnut Hill?

1 A. Chestnut Hill Podiatry.
 2 Q. So what period of time would you
 3 say you were pain free and problem free before
 4 January 19th of 2016? Take me back. Was it a
 5 month, two months, two years, three years, four
 6 years, how long would you say?
 7 A. Sir, specifically as it relates to?
 8 Q. Physical condition.
 9 A. Physical condition, I believe I was
 10 in very excellent health up until January 19,
 11 2016. More specifically I was able to maintain my
 12 diabetes by way of running. I could run up for an
 13 hour and a half to an hour and 45 minutes prior to
 14 the accident on the 19th. It was one of the ways
 15 that my doctor was very pleased with how I was
 16 maintaining my diabetes was by running, because it
 17 also helped me keep my cholesterol low as well as
 18 my blood pressure. So up to then I was in very
 19 good health. I mean, I could run for an hour and
 20 a half to two hours straight.
 21 Q. For how many years were you doing
 22 that?
 23 A. Oh, I was running ever since I
 24 fully recovered from the injury in 1999. That was

1 my choice of exercise.
 2 Q. Roughly 15 years?
 3 A. Uh-huh.
 4 MR. FOX: That's yes?
 5 THE WITNESS: Yes.
 6 BY MR. DROOGAN:
 7 Q. How many days a week did you run?
 8 A. At my peak I was running three days
 9 a week, ten miles a week; three days a week, ten
 10 miles a week.
 11 Q. In your neighborhood?
 12 A. Yes.
 13 Q. Did you run with anyone?
 14 A. No. I just ran on a track with all
 15 of the other Cheltenham residents.
 16 Q. So all of the running that you did
 17 for the hour and a half, hour and 45 minutes was
 18 at the track at Cheltenham High School?
 19 A. No. It was I would divide it up.
 20 Sometimes it would be the track at Cheltenham High
 21 School, sometimes the track at Elkins Park School,
 22 which is closer to my home.
 23 Q. Irrespective of which school, you
 24 always ran on the track?

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1 A. Yes. I was a track runner.

2 Q. Since January 19th of 2016, have
3 you returned to running on the track?

4 A. I cannot run.

5 Q. What my kids call me when they see
6 me out running is kind of jogging or gimping
7 along. Have you done any of that?

8 A. I cannot jog and I cannot run.

9 Q. Is that because a doctor has told
10 you or because Rod Sutton feels that he can't do
11 it?

12 A. I was told by my doctor that
13 there's a possibility that that will not be done,
14 but I cannot run. My knees will not support me
15 the way they supported me prior to January 19,
16 2016 to do running or jogging.

17 Q. Has your doctor cleared you to
18 return to running?

19 A. My doctor has not cleared me to
20 return to running.

21 Q. Have you asked him to do that?

22 A. We haven't had a conversation
23 around running as of yet. He just told me to
24 rehab and get better.

1 being able to walk again. He was concerned with
2 me just walking again. So his conversations was
3 around we just need to get you walking again. And
4 those are the conversations I remember. Because I
5 think there was a chance that I might not be able
6 to walk again. So those are really the
7 conversations around walking. He really didn't
8 entertain much about running.

9 Q. And you can walk, though?

10 A. I can walk, yes.

11 Q. And what distances do you walk more
12 than perhaps to go to your car from your front
13 door?

14 A. Yes, I can walk. I can walk my dog
15 around the corner. I still have trouble going
16 down hills, though, because, again, my knees just
17 don't take the way they used to after the incident
18 on January 19, 2016.

19 Q. Have you asked Dr. Wang in his
20 opinion when it will be that you would be able to
21 return to running?

22 A. I did not because at the last
23 meeting I had with Dr. Wang, again, he was just
24 concerned with me being able to walk without

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1 Q. And this is Dr. Wang?

2 A. Dr. Wang.

3 Q. Has Dr. Wang ever been told by you
4 that you maintain your diabetes by running upwards
5 of an hour and a half to and hour 45 minutes
6 before January of 2016?

7 A. I'm not clear. That question is
8 not clear to me, sir. Can you repeat it?

9 Q. Sure. Did you ever explain to Dr.
10 Wang that one of the ways that you kept your
11 diabetes under control before this event happened
12 at the Speedway store before you injured your
13 knees was running three days a week, ten miles a
14 week?

15 A. I believe I had a conversation with
16 Dr. Wang about running as a way to maintain my
17 diabetes. I do not know if I got into specifics
18 about how much I run.

19 Q. And in words or substance, what did
20 he say to you when you said this is how I get my
21 exercise, this is what I've been doing?

22 A. It is hard for me to recollect the
23 exact conversation around that issue. Most of our
24 conversations was just about me getting better and

1 falling. My legs are very weak at that time. And
2 he was just more concerned with me being able to
3 strengthen my legs so I could do daily activities
4 like walk to my car, get in my car, drive to work,
5 walk up and down my home stairs which I could not
6 do for six months and that kind of stuff. He just
7 wanted me to get back to being able to do regular
8 things like get upstairs and use the bathroom
9 which I couldn't do for six months and not in my
10 TV room. So he was just more concerned with that.

11 Q. And when was the last time you saw
12 Dr. Wang?

13 A. The last time I saw Dr. Wang was
14 July of 2016.

15 Q. Are you scheduled to see him again?

16 A. I'm scheduled to see Dr. Wang March
17 17th of 2017. Excuse me, sir. I would like to
18 state that again. I will schedule to see Dr. Wang
19 on March 17th of 2017. I have not made that
20 appointment as of yet.

21 Q. Why that specific date?

22 A. Because that's the date that works
23 best for my work schedule --

24 Q. Okay.

1 A. -- and my time leave that I can
2 take from work.

3 Q. Who did you last see relative to
4 your knee, was it Dr. Wang or your therapist?

5 A. I believe it was Dr. Wang. I think
6 Dr. Wang released me from therapy, yes, yes. He
7 said that I could just, you know, do therapy
8 informally on my own at home in July of 2016.

9 Q. And when you last saw him, did he
10 tell you something to the effect that you can do
11 what you're able to do, just use your best
12 judgment, did he leave you in that sense?

13 A. Basically he was trying to
14 determine if I can go back to work because I told
15 him that my disability, my short-term disability,
16 was running out. So basically he just gave me a
17 simple test to see if I could hold my weight up
18 and walk from one end of the room to the next so
19 he could clear me to go back to work based on the
20 duties that I do as a principal.

21 Q. Were you able to do that?

22 A. Yes. I was able to get up and
23 support my weight and walk from one end of the
24 room to the next without the use of an aid,

1 without the use of a crutch or a walker. Because
2 at that point I could only walk with a crutch and
3 a walker. And the goal was to get me to be able
4 to support my weight on my own so I would no
5 longer have to use a walker or a crutch.

6 Q. When you returned to your job at
7 the Ferris School, were you using any type of
8 ambulatory assistance?

9 A. I would not have been allowed in if
10 I was, no.

11 Q. Why is that?

12 A. Because Dr. Wang said that I should
13 be able to support my weight without a walker and
14 a crutch.

15 Q. Would the Ferris School have taken
16 you back if you needed to use a cane or an
17 assistive device?

18 A. No, they would not have.

19 Q. Why is that?

20 A. Because I work in a level-five
21 secure care facility.

22 Q. What does that means?

23 A. That means that I work in a
24 facility with adjudicated youths. A cane and a

1 walker would be considered contraband and cannot
2 be taken behind the wall where I work in the
3 school area.

4 Q. Since returning to work after the
5 incident, have you been involved in any
6 altercations with any students where you
7 physically had to subdue them or they came after
8 you?

9 A. I have not. One of -- I have not,
10 no.

11 Q. Before the incident, were you ever
12 involved in an altercation with a student?

13 A. No, I have not. I had to assist in
14 restraints in which I had to secure areas while a
15 student was being restrained, but I was never in
16 an altercation with a student.

17 Q. Have you had to do that since the
18 incident?

19 A. I have not had to do that since the
20 incident.

21 Q. Generally, what does your day
22 consist of as far as desk work, walking? How far
23 do you walk with your job?

24 A. So normally I have to do classroom

1 visitations, which was the concern could I get up
2 from my desk and walk to classrooms. So I can do
3 that. Normally my day is half, half. I split my
4 day between half getting paperwork and what I like
5 to call administrivia done. And the other half
6 I'm in the classrooms evaluating and coaching
7 teachers.

8 Q. On an average, how far do you walk
9 per day?

10 A. Oh, I would say maybe altogether
11 about 30, 40, 50 yards a day from my office to
12 various classroom to various meetings within the
13 facility. And that's hard for me to judge. I'm
14 using that measure, but I'm uncertain about that
15 measure.

16 Q. Did you work yesterday?

17 A. Yesterday was --

18 Q. I'm sorry, did you work last week,
19 Friday?

20 A. Yes, I worked Friday.

21 Q. On Friday, did you work a full day?

22 A. I did.

23 Q. During that full day of work, did
24 you have any pain during the course of your day

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1 while you were at the Ferris School?

2 A. Yes. If I sit too long like I'm
3 sitting now, which was one of the concerns, my
4 knees will get stiff. So I have to stand up and I
5 have to stretch my knees. And I still cannot get
6 up using just knee power. I have to use arm
7 power. Other people can just get up using their
8 knees. I still have to use my arms.

9 Q. Before the incident, were you able
10 to get up without using your arms?

11 A. Yes, yes.

12 Q. That's one I'm going to have to
13 think about. When was the last time that you
14 missed work as a result of the problems with your
15 knees?

16 A. The last time I missed work was, I
17 think, in July of 2016 when I went to my last
18 appointment with Dr. Wang so he could clear me,
19 you know, from formal therapy.

20 Q. Are you on a school year at the
21 Ferris School, in other words, is it September
22 to --

23 A. Yes. So it would be September 2016
24 to June 2017.

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1 Q. And what are your plans for the
2 upcoming summer for June?

3 A. I have to work. Ferris is a
4 12-year -- 12-month program.

5 Q. In other words, they don't send you
6 on a sabbatical to anywhere to --

7 A. No, no, no.

8 Q. When is your next appointment with
9 Dr. Wang -- I'm sorry -- Dr. Davis?

10 A. I'll probably schedule my
11 appointment with Dr. Davis sometime next month in
12 March.

13 Q. On the 17th?

14 A. I don't know when I'll schedule
15 with Dr. Davis, but my six-month diabetic checkup
16 is due sometime in March.

17 Q. Does Dr. Davis know about the
18 physical problems with your knees?

19 A. Yes. She was consulted.

20 Q. And has she offered an opinion or
21 given you any advice?

22 A. She has not.

23 Q. So you saw her roughly six months
24 ago?

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1 A. Yeah. I saw her -- the last time I
2 saw Dr. Davis was roughly around August and July
3 of 2016.

4 Q. Does Dr. Davis know you haven't
5 resumed running?

6 A. Yes. As a matter of fact, she was
7 very concerned about that because she knew that
8 that was one of the ways I was controlling my
9 weight and my diabetes. And she was concerned
10 that I could not run anymore to control that
11 diabetes. She thought that that was one of the
12 reasons why I was so excellently controlled,
13 because I was a runner.

14 Q. Have you substituted it with
15 anything, substituted the running with anything?

16 A. I've tried. But anybody knows that
17 they're a runner there's very few things you can
18 substitute with. I have an exercise bike that I
19 try to use at my home, but it's just not the same.

20 Q. How about the gym, have you tried
21 any of the elliptical machines or any --

22 A. Yes. I've gone to the gym and
23 tried the elliptical machines, but it's still not
24 the effect that it has on my -- it doesn't have

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1 the same effect on my sugar and my diabetes as
2 running did. I don't know what it is about
3 running, but it just works well.

4 Q. How often do you go to the gym?

5 A. I was starting out going very
6 often. But because of my hours at work I don't go
7 as often anymore. So what I did was I got an
8 exercise bike to put in my home. So I use an
9 exercise bike.

10 Q. When was the last time you were at
11 the gym?

12 A. If I recollect, the last time I was
13 at the gym was, I believe, sometime in January.
14 But I work on my exercise bike daily at home
15 instead in my house.

16 Q. Are you able to chart your distance
17 or know what distance you ride?

18 A. Running or exercise bike, sir?

19 Q. With the exercise bike.

20 A. Yes, yes.

21 Q. What's the average distance that
22 you ride?

23 A. I can do about three miles on the
24 bike.

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1 Q. After riding for three miles on the
2 exercise bike, how do your knees feel?

3 A. I'm very sore and really very
4 discouraged because I used to get on those
5 machines for hours at a time. And I was just --
6 and I can't do a half of that anymore. So I'm --
7 it's very discouraging, but I guess I got to take
8 what I can get. But, yes, I'm very sore
9 afterwards. Both knees hurt. It's hard to walk
10 up stairs after I use them. You know, I got to
11 wait a little bit before I can go up the stairs in
12 my home, you know, soreness.

13 Q. Did your physical therapist leave
14 you with any home exercises to build the strength
15 in your legs?

16 A. She did. She did.

17 Q. And what do you do for that?

18 A. I work on those exercises. And
19 those exercises are for basic balance because I
20 had a very hard time just standing up and holding
21 my weight and balancing my weight because both
22 legs, both knees were impacted. So those
23 exercises were just basically to get my basic
24 balance back, not necessarily strengthening. So I

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1 still worked on those. And my balance is getting
2 better.

3 Q. Did your therapist ever explain to
4 you that one of the current techniques for ACL
5 replacement is to take a graft from the patellar
6 tendon, did she ever tell you that?

7 A. No, no one ever spoke to that,
8 nobody spoke to me.

9 Q. Do you do any type of strengthening
10 exercises for your knee; that is, leg lifts or leg
11 curls, side lifts?

12 A. Yeah, I have exercises that my home
13 health aide provided me that, like I said, I was
14 doing it in the bed. But they were mostly
15 exercises to get the full range back to my knees.

16 Q. Was it ever recommended that since
17 you had a gym membership that you would be able to
18 go to the gym and self-therapize yourself with the
19 equipment they have there to strengthen your
20 knees?

21 A. Yes, that was recommended to me.

22 Q. And you haven't done that because
23 of your job?

24 A. Well, the hours. And so what I did

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1 was I compensated by getting an exercise bike.

2 Q. Is your gym open on the weekends?

3 A. It is.

4 Q. Is it open 24 hours?

5 A. It's open until about 11:00.

6 Q. It's on Old York Road?

7 A. Yes.

8 Q. What's the main cross street?

9 A. Old York Road and Church Road.

10 Q. How about at the school, do you
11 have any access to exercise equipment at the
12 school, a gym facility where you could work on
13 straightening your legs?

14 A. No, I don't. Well, we have the
15 children's equipment, but we're not advised to use
16 the equipment for the adjudicated children.

17 Q. Have you noticed any changes in
18 your diabetes as a result of not running?

19 A. I think my diabetes has spiked up a
20 little bit. To be honest, I still try to
21 compensate with the machines, both the bike and at
22 the gym. But, again, it's just not like running.
23 I don't know why my body responds to running so
24 well, but --

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1 Q. How do you monitor your levels of
2 -- your sugar levels?

3 A. I take -- I get my homo -- I get my
4 ac1 checked every six months by the doctor. And
5 then I check my own sugar periodically every week
6 by myself.

7 Q. And what have your sugar levels
8 been recently compared to before the incident?

9 A. Oh, before the incident when I used
10 to run my sugar levels were like 89. I mean, I
11 was great. As a matter of fact, one report my
12 doctor told me I was almost out of diabetes. I
13 was really running a lot then. I had like a 5.9
14 ac1. Now my ac1 is up to 6.6. And my sugars run
15 between 110 and 120 when they were regularly
16 between -- I mean, if I got over 90 it was
17 amazing. I was doing an amazing job. And, again,
18 it was the running.

19 Q. Are those numbers transmitted in
20 any way to your doctor, the daily sugar checks?

21 A. No, no, not the daily sugar checks.
22 But she gets my six-month hemoglobin ac1. She
23 does it.

24 Q. Before you see her, are you going

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1 to have blood work done or does she do it at the
2 office?

3 A. She lets me -- I go to LabCorp to
4 have it done before I see her.

5 Q. And how about your weight, how has
6 your weight been since this incident?

7 A. My weight is not as maintained.
8 Again, and I hate to go back to this, not as
9 maintained as much as it was when I could run.
10 You know, running just jump starts that metabolism
11 better. So I've been trying my best to do it with
12 the machines, in the gym and with my bike and
13 keeping it reasonably under control. But I'm
14 surely not controlling my weight the way I had the
15 ability to do it before the 19th of January. This
16 concerns me.

17 Q. Have you gained weight?

18 A. My weight has been up and down,
19 yes. You know, I've gained some weight since the
20 incident. I've lost some weight since the
21 incident, yes. But I pretty much put on a few
22 pounds since the incident, since I was discharged.

23 Q. Since the incident, have you
24 obtained any life insurance?

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1 A. Yes.

2 Q. Was it the type of coverage where
3 you had to get examined by someone?

4 A. No.

5 Q. Was it through the State of
6 Delaware?

7 A. No. It was I received life
8 insurance when I turned 50 in September through
9 AARP. Thank goodness for AARP.

10 Q. According to the medical records
11 you went from the Speedway store by ambulance to
12 Abington Hospital?

13 A. Yes.

14 Q. And then at some point you went and
15 had surgery at the Lansdale Hospital?

16 A. Yes.

17 Q. Why was that, why did you shift
18 hospitals?

19 A. Because that's where Dr. Wang, my
20 doctor from Rothman, that's where he did his
21 operations.

22 Q. So you were transported by
23 ambulance from Abington to Lansdale or by car?

24 A. By car.

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1 Q. Your wife?

2 A. (Witness indicating.)

3 Q. Yes?

4 A. Yes.

5 Q. Was the diagnosis ever made that
6 one of the tears was worse than the other; that
7 is, the right versus left, left versus right?

8 A. I don't recall, sir. But I do know
9 that they told me that both had ruptured. And
10 that -- that's what I remember. I was in a fog in
11 and out, but I do remember them telling me that
12 you ruptured not one, but you ruptured both of
13 your knees, Mr. Sutton.

14 Q. Was it ever explained to you what
15 caused them to rupture?

16 A. It was not explained to me what
17 caused them to rupture, but they asked me the
18 incident that led them to rupture.

19 Q. And mechanically did they explain
20 how the incident caused them to rupture, did you
21 ever ask?

22 A. I don't recall. I was on a lot of
23 pain medicine. And at that point they were just
24 trying to control my pain. I was in severe pain

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1 for many days. And they were just trying to
2 control my pain. I was in and out.

3 Q. When you explained to the doctors
4 who examined you how it was that you hurt
5 yourself, did any of the doctors respond that's an
6 unusual way to tear both of your patella tendons?

7 A. They did not respond about the
8 incident. They just responded about the
9 condition, which was two patella tendons ruptured
10 at the same time.

11 Q. And were you told how common that
12 was, uncommon it was, what it typically takes to
13 do something like that?

14 A. They just thought that that was
15 very uncommon.

16 Q. Did they explain -- did you ask how
17 it happened to you then with a non-contact injury?

18 A. Those questions were never asked to
19 me.

20 Q. Was it ever explained to you that
21 you were something with the physical makeup of
22 your knees led you to have the bilateral tendon
23 ruptured?

24 A. That was never explained to me.

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Q. When you injured your knee back in '99, how mechanically did you injure it?

A. I was playing basketball with a group of young people. We went up for a rebound. And we all came down and fell. The 16-year-olds jumped right back up. And I crawled to the side.

Q. Was there physical contact or was it just the way you landed?

A. I don't remember. I know we were in a group of people. We all went up for the ball. I don't know -- I don't recall. It was 20 years ago. But I don't know that, you know, there was contact. We fell. The younger ones up jumped back up. And I didn't.

Q. After the Lansdale Hospital I have you being discharged and then you were receiving physical therapy from PowerBack Rehabilitation?

A. Yes.

Q. Did you actually go there for it or did they come to your home?

A. No, I could not go home because I could not mobilelate, and my wife could not mobilelate me. So they sent me to a rehab center because I could not move my legs. I was crippled.

Q. And what plans do you have for Easter this year?

A. I don't know.

Q. Do you usually go away for it or go to a --

A. Most of the time we try to take the kids to see my mother.

Q. Which is where?

A. In Newark, Orange actually, Newark area.

Q. Have you seen anyone since Dr. Wang and your family doctor relative to your knee?

A. No.

Q. Do you have scar --

MR. FOX: Home therapist.

THE WITNESS: Does the home therapist count?

BY MR. DROOGAN:

Q. I mean, outside the -- where you actually went to an appointment with someone?

A. Oh, no, no.

MR. FOX: Mike, can we take a break?

MR. DROOGAN: Sure.

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Q. So PowerBack Rehab is an inpatient facility?

A. Yes.

Q. And I have you there approximately 19 days. And then you had home nurse case?

A. Yes.

Q. Home nursing care?

A. Yes.

Q. When you were discharged from the rehab center in Willow Grove, what type of assistive devices did you have?

A. I needed a hospital bed. I could not mobilelate without a hospital bed.

Q. But you had knee braces?

A. Yeah, I had two knee braces, a walker, a wheelchair and a hospital bed.

Q. How long did you use the wheelchair?

A. I used the wheelchair up until May of 2016.

Q. How did you spend Easter that year?

A. I spent Easter -- I don't recall. But I remember I spent Easter in a wheelchair in my home.

(Whereupon, a discussion took place off the stenographic record.)

BY MR. DROOGAN:

Q. Sir, according to the written responses that were provided to us, we call them Interrogatory Answers as lawyers, but there are statements made regarding different issues.

And one of the things that we were told was that in terms of the time lost from work after this incident that you lost -- strike that question -- you used 12 sick days and all of your vacation time?

A. Yes.

Q. How much vacation time did you get?

A. We get hours. And I had 100 hours. But we accrue time monthly. So we accrue 9.5 hours a month from the day we start. We start with zero and then you accrue 9.5 hours a month.

Q. On top of that, do you get PTO, paid time off, for sickness or whatever?

A. Everything has to come out of those pool of accrued hours.

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1 Q. Before the incident, did you have
2 any plans to leave the Ferris School?

3 A. No.

4 Q. Are there activities other than
5 running that you are no longer able to do as a
6 result of the injuries to your knees?

7 A. I haven't tried everything
8 physically that I used to do, but running is the
9 one obvious one. I can't play basketball even
10 casually now. Before I used to play casually. I
11 can't play casually because I can't cut and I
12 can't jump remotely. I couldn't jump that much
13 anyway. Now I can't even, you know, jump a little
14 but. I mean, I can go out and shoot and that's
15 it. But I can't do anything pickup. I can't move
16 with the ball or cut or anything like that.

17 Q. When was the last time you played
18 pickup basketball before January of 2016?

19 A. I used to go out with my son out at
20 the hoop and just bum around with him a little
21 bit. At Ferris sometimes I would, you know, get
22 on the court and challenge the kids to sometimes
23 just joking around with them I would get the ball
24 and back them down low, just casually with the

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1 play basketball.

2 Q. Which one?

3 A. Justin. I will take my son Alex to
4 the Lamont Center. And I just spend time with my
5 wife and my family and my home.

6 Q. Do you coach?

7 A. No, I don't, I don't coach.

8 Q. At the time of the incident, were
9 you coaching?

10 A. No, I was not.

11 Q. In one of the photographs I saw of
12 your son from the evening of the incident.

13 And it was Alexander that was with
14 you?

15 A. Yes, it was Alexander.

16 Q. It looked like he had a warmup suit
17 for a school with a C on it?

18 A. Yeah, it was at the time, yes,
19 because he also plays for -- he plays for
20 Cheltenham freshman team.

21 Q. Because he's in the School
22 District that --

23 A. Yeah, at that time he was -- well,
24 this was before he went to the emotional school he

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1 kids. But I didn't really play a game. But I had
2 the ability to do so if I wanted to.

3 Q. Are there any other activities that
4 you can tell me about that you're unable to do?

5 A. Again, I can't get up from a seat
6 without the help of my arms. And I can't run.
7 That's it. And, you know, like I said, I can't
8 play basketball.

9 Q. Are there activities that you're
10 able to do that do not cause you pain?

11 A. I can sit for moderate times. I
12 can get up and down from my bed. These are all
13 things I couldn't do I can do now. I can use the
14 commode now, which I could not do for long periods
15 of time. It's still hard for me to get up off of
16 the commode without the use of my arms. But I can
17 do those activities off and on without pain
18 sometimes. And it's sad because I used to do
19 those without thinking about them. Now I have to
20 think about them.

21 Q. What activities do you do on the
22 weekends when you're not working?

23 A. Mostly I'm a family man, I'm
24 dealing with my family. So I will go see my son

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1 was a student at Cheltenham High School his
2 freshman year.

3 Q. So the warmup suit he has on is for
4 his high school team?

5 A. Well, his freshman high school
6 team, yes.

7 Q. And you had mentioned earlier that
8 the phone calls that you may have made to your
9 wife earlier in the day of the incident may have
10 surrounded your son's basketball game?

11 A. My oldest son who played varsity.

12 Q. At Cheltenham?

13 A. At Cheltenham High School, yes.

14 Q. Did your son ever play AAU?

15 A. Which son?

16 Q. The older son, Justin?

17 A. Yes.

18 Q. Did you coach it?

19 A. No, I did not.

20 Q. After -- at the time of the --
21 strike that question.

22 At the time of the incident then
23 both Justin and Alexander were playing basketball
24 for Cheltenham High School?

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1 A. Yes.
 2 Q. Did they play any sports in the
 3 spring?
 4 A. Yes. Justin runs track.
 5 Q. Did you attend any of his track
 6 meets that spring, the spring of 2016?
 7 A. Yes, I did. When I was able to get
 8 my braces off I was able to go to Abington High
 9 School with the use of my walker. And my wife was
 10 able to get me up to the curb so I could stand on
 11 my walker and watch him do the high jump.
 12 Q. And that's his --
 13 A. Yeah, the triple jump, yeah, yeah,
 14 yeah. That's when my legs finally started to bend
 15 I could get out of the house and try to see his
 16 meet.
 17 Q. So that would have been
 18 approximately April?
 19 A. Yeah, April, Aprilish.
 20 Q. How many track meets were you able
 21 to attend?
 22 A. That was the only one that I could
 23 go to, yeah, because she had to put me in the back
 24 of the car long ways. I still couldn't bend.

1 A. I last belonged to a church, I
 2 believe -- okay. Let me -- I believe it was
 3 either June of 2014 or June of 2015 when I left my
 4 previous church. I believe it was June of 2015.
 5 Q. And were you involved in any of the
 6 activities at the church, whether it be -- what
 7 kind of a church was it?
 8 A. It was a Baptist. And, yes, I'm an
 9 ordained Baptist Deacon. So I was -- I gave
 10 Communion. I visited the sick and shut-in. I led
 11 service as well as Bible study.
 12 Q. But that ended in June of 2015?
 13 A. Or 2014. I'm not sure, sir. My
 14 membership in the church did. As you know, you're
 15 always a deacon.
 16 Q. How about chores around the house,
 17 you said somebody has to walk the dog?
 18 A. Well, now I can walk the dog. I
 19 just recently started walking the dog.
 20 Q. Mornings or evenings?
 21 A. Evenings. I can --
 22 Q. What kind of dog is it?
 23 A. It's a pit bull. I still have
 24 problems going downhill with the bull, though. It

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1 Q. Are you a member of a church group
 2 or organization, parish?
 3 A. I was. I was. Right now we're
 4 searching for a church, but I was a member of a
 5 church, yes.
 6 Q. At the time of the incident, were
 7 you?
 8 A. No. At the time of the incident we
 9 were searching for a church of our own.
 10 Q. So searching means that on the
 11 weekends you're not going to church?
 12 A. Yeah. Searching means that I have
 13 not officially joined a church, but that we were
 14 visiting churches.
 15 Q. Has that stopped?
 16 A. A lot of that stopped after January
 17 19, 2016 only because I just couldn't mobilelate
 18 any more.
 19 Q. And do you have plans to return to
 20 searching for a church?
 21 A. Yes, we plan to start looking for a
 22 church again.
 23 Q. When did you last belong to a
 24 church?

1 will pull me downhill and then my knees lock.
 2 Q. How far from your home do you walk
 3 before you get to that hill?
 4 A. I don't go to that hill all the
 5 time. But when I do I have to walk about three
 6 blocks.
 7 Q. And do you have any problems with
 8 your knees currently? In this we had a little bit
 9 of warmer weather last week. But when you were
 10 out walking the dog last week, were you having any
 11 problems with your knees?
 12 A. Not specifically. Just, again, I
 13 have to be very intentional when I -- you know,
 14 when I'm walking and when the dog starts pulling,
 15 because I can't run with the dog, when the dog
 16 starts pulling. I have to be intentional about
 17 how I can pull back because I can't always plant
 18 those knees and pull him back. So I have to use a
 19 little lot of arm strength to kind of keep him
 20 from running because he's a big pit.
 21 Q. How much does he weigh,
 22 approximately?
 23 A. Oh, about 80 pounds.
 24 Q. And do you walk him alone?

1 A. I do. Now I do, yeah.
 2 Q. Who else in the house walks the
 3 80-pound pit bull?
 4 A. I wish I could get somebody else to
 5 do it.
 6 Q. Join the crowd. How about the
 7 mornings, who's relegated to doing it?
 8 A. Well, we don't walk him in the
 9 morning. We just walk him in the evening when I
 10 come home.
 11 Q. Who does the other chores around
 12 the house such as cutting lawn, raking leaves,
 13 trash?
 14 A. Okay. So I used to do that a lot.
 15 That used to be something else that I did. I used
 16 to love gardening. I tried to do it again. And
 17 so I'm able to cut the lawn. But my sons did it
 18 when I couldn't do it. So we -- whereas I did it
 19 most of the time, now my sons do it when I can't
 20 do it because of my knees. So they'll cut the
 21 lawn. And I will assist and help. But, as you
 22 know, sometimes supervising a teenager is more
 23 work than doing it yourself.
 24 Q. When you started at the Ferris

1 intention to be able to cut the lawn again?
 2 A. I don't know. I don't know.
 3 Q. How about the end in the fall, were
 4 you able to do the leaf raking, if you have any of
 5 that on your street at your house?
 6 A. Well, I blew it with the blower.
 7 Q. And who brings up the trash cans?
 8 Do you have that in your neighborhood?
 9 A. Yeah, I bring out the trash cans,
 10 yeah.
 11 Q. Any problems doing that?
 12 A. No. Again, I just -- I just can't
 13 do it as easy, you know, as I could.
 14 Q. And we haven't had a lot of it this
 15 year, but how about snow, who takes care of the
 16 snow?
 17 A. I shovelled it this year because,
 18 again, the snow, the way I shovel I just use arms
 19 and not a lot of legs. But --
 20 Q. You did it alone?
 21 A. Yeah. I went outside and I
 22 shovelled, but it was a light snow. So it really
 23 wasn't that strenuous, but just using my arms.
 24 Q. Did you have any problems when you

1 School, were you still cutting the lawn?
 2 A. In July of 2013, yes.
 3 Q. And you still were able to keep
 4 that up despite the longer drives and the longer
 5 commute?
 6 A. Sometimes. I tried to work in the
 7 weekends the best way I could.
 8 Q. And you've returned to being able
 9 to cut the lawn -- well, last summer were you able
 10 to do it?
 11 A. Well, it was --
 12 Q. The summer into the fall?
 13 A. Yeah, it was a trial period. But I
 14 could not do it. So I had to -- I tried to once
 15 and I just couldn't do it. So my son started to
 16 cut the lawn. This is the first summer which my
 17 son cut the lawn and I didn't do it. I like
 18 working outside. But I just couldn't. My knees,
 19 I couldn't do it as much as I used.
 20 Q. So Alexander is able to cut the
 21 lawn?
 22 A. I have to pay him, believe it or
 23 not.
 24 Q. And then this summer is it your

1 were doing that?
 2 A. Oh, yeah, yeah. I just -- I'm just
 3 traumatized and I'm very scared of falling. And
 4 so I was -- it was an ordeal because, you know, my
 5 knees are not like they are. And if I fall -- so,
 6 yeah, I was very, very unsure of myself, very
 7 unsteady.
 8 Q. Were you able to do it?
 9 A. Huh?
 10 Q. Were you able to complete it?
 11 A. Yeah, yeah, yeah, uh-huh, I just
 12 was.
 13 Q. In the winter of 2016 after the
 14 incident, did you have to hire anyone to do the
 15 snow removal, snow shovelling, salting?
 16 A. That was a very stressful time
 17 because my family usually depends on me. No, we
 18 didn't have to hire anyone. But we had to have a
 19 neighbor come and do it. And my wife had to find
 20 a friend to do it because I'm normally there and I
 21 couldn't do it.
 22 Q. Now, we were supposed to have your
 23 deposition that one day that it snowed this year
 24 and I think we only had one day.

1 How physically were you feeling
2 when you were doing the snow shovelling?

3 A. You know, any -- you know, after
4 any physical exertion my legs hurt, my legs hurt.
5 And so I got to sit down and I got to rub my legs
6 down. My legs hurt.

7 Q. While you were doing it, were your
8 knees bothering you?

9 A. Off and on, but I would just stop
10 and, you know, then continue. I did it really
11 slow, slowly than it normally would take me. You
12 know, I'm trying to adjust for what I can't do
13 anymore. I'm trying to adjust to what I can't do
14 anymore.

15 Q. Have you been up on any ladders
16 since the incident?

17 A. No, no. I can't.

18 Q. No Christmas decorations, nothing
19 like that?

20 A. No, no. I haven't been on any
21 ladders, not that I recall, I didn't get on any
22 ladders, no, un-unh.

23 Q. And your property, does it require
24 -- can you do it with a lawnmower or do you need a

1 that and my wife's car, which is a BMW X3 2008 as
2 well.

3 Q. Is it the same white Dodge Caravan
4 that was at the Speedway store that evening?

5 A. No. That was a Chevy Uplander.

6 Q. Do you still have that?

7 A. No, I don't have that anymore.

8 Q. In your Interrogatory Answers it
9 said that one of the consequences of these
10 injuries was that you will never run again, and it
11 says in parentheses, (jog), closed parentheses.

12 Do you feel yourself that you will
13 never be able to jog again?

14 A. Yeah. I -- just my knees just
15 won't do it anymore, I don't think. So I have to
16 adjust for that. And I'm trying to accept that.

17 Q. When you return to Dr. Wang, are
18 you to going to seek his permission to returning
19 to some form of jogging?

20 A. I believe, if I recollect, I
21 believe that Dr. Wang counseled me against that.
22 And, again, his emphasis was just on getting me to
23 walk again and do daily activities like walk up
24 and down stairs.

1 tractor to do it?

2 A. It's a lawnmower, a push mower.

3 Q. Do you have any plans this year for
4 a vacation or a trip?

5 A. We do not.

6 Q. Is that because of college tuition
7 or is that because of your knees or something
8 else?

9 A. We just haven't planned -- to be
10 honest with you, it's probably a little bit of
11 both, but probably primarily college tuition.

12 Q. And before the incident, did any of
13 your outside activities ever include golf or
14 fishing or anything else other than occasionally
15 going to the gym and shooting the basketball and
16 running?

17 A. No, it didn't.

18 Q. Are there any community groups that
19 you're a part of, whether they be political or --

20 A. No, no. Just my church.

21 Q. What kind of vehicle do you drive?

22 A. I drive a Dodge Caravan 2008.

23 Q. A van?

24 A. A van. And I alternate between

1 Q. Did he give you any type of
2 parameter for the recovery for this injury, did he
3 say this is 15-month injury for recovery, a
4 two-year recovery window, did he mention anything
5 like that?

6 A. He didn't say, but I do recollect
7 him saying that there's a strong chance that I
8 might have to have knee replacements in the future
9 based on this injury.

10 Q. Did he explain why?

11 A. He did not, but I do recollect him
12 saying that that was a possibility.

13 Q. As part of his examination, did he
14 tell you that your knees were arthritic?

15 A. No, he did not.

16 Q. Has any doctor told you that your
17 knees are arthritic?

18 A. No, they haven't.

19 Q. Has any doctor ever commented on
20 any phrases like bone on bone or reduced cartilage
21 of anything like that?

22 A. Nope, nope.

23 Q. And before this incident you didn't
24 have any type of knee pain whatsoever? In other

1 words, you didn't wake up and feel them creaking
2 or cracking, no point pain in any joints?

3 A. No. Before January 2019(sic) I
4 could run anywhere from five to eight miles with
5 nothing more than a stretch afterwards.

6 Q. At a clip five to eight miles?

7 A. Yeah. I could run for about two
8 hours straight.

9 Q. And what pace?

10 A. Oh, they call it LSD in running
11 magazines, slow long distance. So I would start
12 out slow and then I would gradually build up the
13 distance and build up the distance. It was, you
14 know, it was a way to relieve stress because I'm
15 an urban principal as well as -- because I don't
16 drink or smoke. So that was my way to relieve the
17 stress and keeping my diabetes under control.

18 Q. And the pace you would run, would
19 they be nine-minute miles, ten-minute miles?

20 A. Yeah.

21 Q. What would you say?

22 A. It took me -- all I can say is that
23 I could run five miles in an hour and 15 minutes.
24 I don't know what the rate of that is. Usually I

1 A. I don't recollect. Maybe once,
2 maybe twice. But I don't really recollect.

3 Q. When you went to that store once or
4 twice before January of 2016, did you physically
5 go into the store?

6 A. Yes, I believe I did.

7 Q. You made a purchase and then came
8 out?

9 A. I believe that I did. I'm not
10 sure, sir. I don't know whether I went in to pay
11 for gas or I went in to get something else. I
12 don't recollect.

13 Q. Why was it that you went to the
14 Speedway store on the evening of the incident?

15 A. I went to get gas and to purchase
16 my son a hotdog.

17 Q. So according to the video the
18 incident happened around 6:38, 6:40, give or take,
19 p.m. What were your hours that day at work?

20 A. I think I got off about regular
21 time because we had to go see my son play
22 basketball at Upper. That's where we were, on our
23 way, to see my older son play basketball at Upper
24 Dublin. So I left about 4:30, I believe, regular

1 could do five miles and then I could go another
2 half hour after that.

3 Q. I want to shift gears and talk with
4 you a moment about the incident at the Speedway
5 store. Had you ever been to that store when it
6 was Hess?

7 A. I believe I was. I just don't
8 recollect when it was.

9 Q. Did you have a go-to store for fuel
10 in your neighborhood, is there a place where you
11 always went?

12 A. Yeah. I normally go to the Sunoco
13 on Cheltenham Avenue right by my home.

14 Q. When do you think it was last you
15 were at that store?

16 A. Which store, sir?

17 Q. The Speedway store.

18 You do know that at some point it
19 was a Hess and then it became a Speedway?

20 A. That night on January 19th was the
21 first time I was in that store as a Speedway
22 store.

23 Q. And how many times do you think you
24 were there when it was Hess?

1 time because I wanted to get home so we could get
2 to the game.

3 Q. And what time did you arrive home?

4 A. I believe I got home between 5:00
5 and 5:30 or between 5:00 and 6:00, if I wanted to
6 give a true estimate.

7 Q. Well, if you left at 4:30 with a
8 one-hour commute you didn't get home at 5:00.

9 A. That's what I'm saying, between
10 5:00 and 6:00. But I don't know if I left at 4:00
11 or 4:30 because my day ends at 4:00. So I could
12 have left at 4:00.

13 Q. When you arrived home, what did you
14 do?

15 A. I gathered my family and we were
16 going to see my son play basketball away at Upper
17 Dublin High School. So I gathered my wife and son
18 and we got into the car to go see my son.

19 Q. Did you change from what you were
20 wearing that day?

21 A. Yes, I changed.

22 Q. And I know you said you were
23 wearing sneakers. According to the videotape you
24 had a hat on?

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1 A. Uh-huh.
 2 Q. A Phillies hat?
 3 A. I think it was a Phillies hat.
 4 Q. How else were you dressed?
 5 A. I had black sweatpants on and a
 6 black coat. I'm not sure of the shirt I had
 7 underneath the coat. I think it was a green
 8 hoody.
 9 Q. What were the weather conditions
 10 that evening?
 11 A. Very cold, very cold.
 12 Q. Was it clear?
 13 A. It was, it was fairly clear, yes,
 14 but extremely cold.
 15 Q. And before you left the house that
 16 evening, did you know you needed fuel?
 17 A. I believe that I might have noticed
 18 I needed fuel on the way to the game because we
 19 stopped off on 309 because that was on the way to
 20 the game. I think I stopped to get fuel there.
 21 Yeah, I think I noticed it as we were going down,
 22 uh-huh.
 23 Q. You mean Easton Road?
 24 A. Yeah, yeah, when we were going down

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1 to 309 to go to the game I think I mentioned to my
 2 wife I'm going to stop and get some fuel.
 3 Q. So you were going to take Easton
 4 Road to 309?
 5 A. No. I took Cheltenham Avenue to
 6 309. And then once we got on 309 I told her I was
 7 going to the stop-off to get some fuel and to get
 8 Alex something to eat. And that's when we went to
 9 Easton Road from 309 and we were going to back on
 10 309 to go to Upper Dublin.
 11 Q. And why did you choose the Speedway
 12 store?
 13 A. I don't know. I just pulled in,
 14 pulled up to the pump. It was a random choice.
 15 Started pumping gas. My son said he wanted
 16 something to eat. So we told him we would get him
 17 a hotdog to hold him over after the game. And
 18 that's --
 19 Q. So you pulled up to the pump?
 20 A. Uh-huh.
 21 Q. And you arrived at the Speedway
 22 store, give or take, 6:30, 6:35.
 23 What time was the game?
 24 A. The game, I think, started at 7:00,

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1 7:30.
 2 Q. And your older son was already at
 3 the --
 4 A. Yes.
 5 Q. He was already at Upper Dublin?
 6 A. Yeah. He travelled with the team.
 7 Q. And how did your younger son get
 8 home from his game?
 9 A. I don't know if he had a game that
 10 day. I don't recollect. I believe he was home
 11 when I got to the house. I don't recollect those
 12 details. But I do know that he played for the
 13 freshman team.
 14 Q. If he was wearing his warmups for
 15 the Cheltenham with the C on the chest --
 16 A. Yeah, I mean, he would wear his
 17 warmups anyway because he was proud he was on the
 18 team. But I don't recollect if he had a game that
 19 night. He might have had an earlier game because
 20 the freshman play much earlier than the varsity.
 21 But I don't recall those details, sir.
 22 Q. Had you eaten between when you left
 23 school and the time of the incident?
 24 A. I ate lunch. I ate lunch.

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1 Q. After leaving school at 4:00, did
 2 you eat before the time of the incident?
 3 A. I think I grabbed something at
 4 home. And I don't recall what it was. But I
 5 think I grabbed a snack of some sort.
 6 Q. And with your medical condition
 7 with the diabetes, do you have to eat at certain
 8 times of the day and certain amounts of food?
 9 A. You know, as long as I eat a
 10 healthy lunch and a healthy breakfast I'm good and
 11 then, you know, I can have a snack.
 12 Q. So when do you normally have
 13 dinner?
 14 A. I'll normally have dinner because I
 15 eat lunch around 12:30, I'll normally have dinner
 16 when I get home about 7:00ish, 7:30. We normally
 17 eat dinner late because of my commute.
 18 Q. And then that evening you just
 19 picked up something to go because you had to get
 20 to the game?
 21 A. Yeah. And normally I eat dinner at
 22 7:30 anyway. So it wasn't a big deal for me to
 23 eat it later. But you know teenage boys, they eat
 24 all the time. So we stopped to get him a hotdog.

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1 Q. In your prior visit to the store
2 when it was a Hess store, did you have any
3 problems with your footing?

4 A. Not that I recall.

5 Q. Do you recall there being a
6 sidewalk in front of the store that you had to
7 step up onto to enter the store?

8 A. Yes.

9 Q. And why is that something that you
10 recall?

11 A. Because it's easy to distinguish
12 the rise when you're walking up on it. You can
13 see that you have to step up.

14 Q. And you remember that from the one
15 or two times that you were at the Hess store
16 before this incident?

17 A. I recall, yes. To the best of my
18 knowledge, I believe I noticed it walking in, the
19 rise that goes up.

20 Q. And when you were coming out of the
21 store on those one or two times, did you have any
22 problems stepping off the sidewalk and onto the
23 macadam below it?

24 A. Are you talking about when it was a

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1 Hess?

2 Q. Yes, sir.

3 A. I don't recall. I don't recollect
4 that I had a problem stepping off.

5 Q. And did you know when it was a Hess
6 store that you had to step off of the curb that
7 you had already stepped onto to exit the store?

8 A. Yes, I believe that I recollect
9 that I saw -- I was able to distinguish the curb
10 then.

11 Q. And before this incident, before
12 January 19th of 2016 when you went to the store
13 and it was owned by Hess, did you ever say
14 anything to anybody about the sidewalk and the
15 curb and the stepdown or the step-up?

16 A. Not that I recollect, sir.

17 Q. Do you know of anyone else that's
18 ever had any difficulty stepping down off of that
19 sidewalk onto the macadam below it?

20 A. Not that I recollect, sir.

21 MR. DROOGAN: Mark this as

22 Sutton-5, please.

23 ---

24 (Whereupon, Exhibit Sutton-5 was

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1 marked for identification.)

2 ---

3 BY MR. DROOGAN:

4 Q. Mr. Sutton, I'm going to show you
5 an image that we obtained from Google Maps, which
6 we marked as Exhibit-5, and ask you if you
7 recognize what's shown in that photograph?

8 A. Yes. This is, I believe, the store
9 when it was a Hess.

10 Q. And it's your recollection that you
11 would have stepped up onto the sidewalk that's in
12 front of the two front doors that's shown in that
13 photograph?

14 A. Yes.

15 Q. And then when you exited the doors
16 you would have stepped down off of the sidewalk?

17 A. Yes.

18 Q. And onto the what I've been calling
19 the macadam; that is, the area between the fuel
20 pumps and the curb?

21 A. Yes.

22 Q. For the record, can you just circle
23 the area that you would have stepped up onto to
24 get into the doors?

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1 A. I believe it's there. I mean, the
2 car is there, but I believe it would be that area
3 there. (Witness indicating.)

4 Q. And you've drawn a circle basically
5 partially over the right front headlight of the
6 car, the maroon car, that's shown in the
7 photograph?

8 A. Yeah. I'm just trying to say that
9 that's the area that's in front of the door, but
10 that's the area that I would go up on if I was
11 walking into the door at that time, if I was going
12 through the front door.

13 Q. I'm just going to put -- so we know
14 this is just not a circle, do you mind if I put
15 path here and draw an arrow to it?

16 A. Sure.

17 Q. So I've just put path in the store
18 right up to arrow. So why don't you put a circle
19 there. I should say I put an arrow up to the
20 circle you put and drew it down to a phrase that
21 says path into the store.

22 MR. DROOGAN: Mark this as
23 Sutton-6, please.

24 ---

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1 (Whereupon, Exhibit Sutton-6 was
2 marked for identification.)

3 ---

4 MR. DROOGAN: And, for the record,
5 Exhibit-6 is a Google image from August
6 2014.

7 And Exhibit-7 will be another
8 Google image from August 2014 of the
9 Hess store.

10 ---

11 (Whereupon, Exhibit Sutton-7 was
12 marked for identification.)

13 ---

14 BY MR. DROOGAN:

15 Q. I'll show you Exhibit-6 and
16 Exhibit-7 and I'll ask you if you recognize what's
17 shown in those two?

18 A. Yeah, I believe this is the Hess on
19 Easton Road. (Witness indicating.)

20 Q. Okay. And in terms of the walkway
21 into the store, is that something you recall being
22 able to see from the roadway from Easton Road as
23 you entered the store?

24 MR. FOX: Do you mean from when

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1 he's out in the street?

2 MR. DROOGAN: Yes.

3 BY MR. DROOGAN:

4 Q. When you're turning in off of
5 Easton Road, would you have been able to see the
6 walkway in front of the store, the sidewalk in
7 front of the store, is that something you have a
8 recollection of?

9 A. Yes, I guess I would be able to see
10 that, sir.

11 Q. And then when you were getting fuel
12 on any of those occasions, does Exhibit-7 refresh
13 your memory of being able to see the sidewalk in
14 front of the store from the area where the pumps
15 were?

16 MR. FOX: 7, do you have 7, Mike,
17 an extra one?

18 MR. DROOGAN: Yes.

19 MR. FOX: Thank you.

20 THE WITNESS: Yeah, from this photo
21 I believe I can see that, yes.
22 (Witness indicating.)

23 BY MR. DROOGAN:

24 Q. Can you just circle it on

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1 Exhibit-7?

2 A. So what is am I circling exactly,
3 counselor?

4 Q. The walkway that's in front of --
5 the sidewalk in front of the store that you can
6 see from the pump area.

7 A. Okay. (Witness complies.)

8 Q. And we're going to have trouble.
9 Could you just put, if you could, a larger circle
10 there? Because when this gets a part of the
11 record it may get obliterated a little bit.

12 A. (Witness complies.)

13 Q. So you've drawn a circle around the
14 circle. And that shows the sidewalk that leads
15 into the store, the Hess store?

16 A. Uh-huh.

17 Q. On the occasions that you went
18 there as a Hess store, would it have been to get
19 gas as well as make a purchase?

20 A. I don't exactly recollect, but,
21 yes, it would have been either/or.

22 Q. And did you ever notice anything
23 that you thought was a hazardous condition at that
24 Hess store in the times that you were there before

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1 January 19th of 2016?

2 A. No, I don't.

3 Q. Did you ever encounter anything
4 that you felt was a tripping hazard at the store
5 back in the days that you went there before
6 January of 2016?

7 A. No, I don't.

8 Q. That evening when you were getting
9 fuel, did you pay at the pump?

10 A. I believe I paid for fuel at the
11 pump, yes.

12 Q. Did you complete pumping the fuel?

13 A. Yes.

14 Q. And did you get a full tank, half
15 tank; can you recall?

16 A. I don't recall the amount.

17 Q. Were you outside long enough that
18 you began to get cold?

19 A. Possibly, yes. I mean, I don't
20 recall those -- it's hard to recall what happened
21 up until the incident surrounding it.

22 Q. Well, do you remember it being
23 really cold when you were outside that evening?

24 A. I remember it being cold, yes.

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1 Q. You finished pumping fuel and then
2 your son decides he wants to get something to eat.
3 And then the two of you walk up to
4 the store?

5 A. Yes.

6 Q. And how was the lighting that night
7 at the store?

8 A. It was pretty decent. I was --
9 from going into the store I could pretty much see
10 my way. I remember looking down and being able to
11 see clearly the rise from the ground up.

12 Q. And when you said you were able to
13 see and the lighting was pretty decent, was that
14 both the ambient lighting from above -- strike
15 that question.

16 When you say the lighting was good,
17 was that the lighting that was coming from the
18 canopy above the pumps?

19 A. I'm not sure. I just know it was
20 really enough where I was able to see. Going into
21 the store I was able to distinguish the rise and
22 the step up.

23 Q. And for the middle of January, I
24 guess the moon had already been -- the moon was

1 store?

2 A. There might have been some people
3 coming out, sir. I don't recollect for certain.

4 Q. Before you made your way up to the
5 store to make your purchase, did you notice anyone
6 having difficulty stepping down from the sidewalk
7 onto the macadam?

8 A. I don't recollect.

9 Q. As you made your way up to the
10 sidewalk, did you have to step up onto it to get
11 into the store?

12 A. Yes. It was -- you know, it was
13 clear it was a step up. And when I looked down --

14 Q. Did you have any difficulty doing
15 that?

16 A. No, not going in. It was clearly
17 defined going in.

18 Q. And did it seem like your average
19 curb height or did it seem higher or lower; do you
20 remember?

21 A. I don't remember. I just know that
22 when I was looking down I was able to step up
23 because I could see the rise in the sidewalk.

24 Q. You said you've had the opportunity

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1 out already and the sun had set?

2 A. Yeah. It was pretty dark.

3 Q. And was it a moonlit night that
4 evening or was it --

5 A. I don't recall if the moon was out
6 or not.

7 Q. As you walked to the store, was
8 there light coming from -- emanating from inside
9 the store; that is, the fluorescent lights inside
10 the store?

11 A. The store was lit inside. I do
12 remember it was lit. That's how I knew it was
13 open, it was lit inside.

14 Q. As you were walking into the store,
15 did you see anybody -- strike that question.

16 As you were walking up to the
17 store, did you see anybody walking out of the
18 store?

19 A. I don't recall. There might have
20 been others walking out of the store. I know that
21 when I walked into the store I was looking down so
22 I could step up, so --

23 Q. And when you were pumping fuel, did
24 you happen to notice anyone coming out of the

1 to see still images from the video?

2 A. Yes.

3 Q. But you haven't watched the entire
4 video?

5 A. Images of it, yes.

6 Q. Was there anything that you thought
7 was altered from what you recall; that is,
8 something that you said, man, that video is just
9 not showing what happened that night?

10 A. Not what I saw, sir, not what I
11 saw.

12 Q. And how about your son, he was
13 walking in behind you. Do you know if he had any
14 problems getting up onto the sidewalk and then
15 into the store?

16 A. Not that I recall.

17 Q. And while you were in the store
18 that evening, did any employee say anything to you
19 about watching your step or being careful?

20 A. They did not.

21 Q. And did you hear anyone come into
22 the store while you were in there saying anything
23 about the condition of the sidewalk or the
24 stepdown or the step-up?

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1 A. I did not.
 2 Q. When your wife went to the store to
 3 take the photographs, did she speak with anybody
 4 at the Speedway store that day?
 5 A. I don't know, sir. I was in a
 6 nursing home under pain medicine. I don't know
 7 what took place when she was taking the photos.
 8 Q. Do you know where the photographs
 9 that your counsel brought with and then shared
 10 with me, do you know where they're stored today
 11 other than his computer?
 12 A. No, I do not know, sir.
 13 Q. Are they on your -- strike that
 14 question.
 15 Do you have a computer at home?
 16 A. I do have a computer at home.
 17 Q. Have the photographs ever been put
 18 from -- strike that question.
 19 Do you know how your wife took the
 20 photographs, what she used?
 21 A. I believe she took her phone.
 22 Q. And did she have one similar to
 23 you?
 24 A. She has a -- no, no, she does not.

1 to the ground?
 2 A. The only person that -- there were
 3 a number of people coming in and out of the store,
 4 but I do not know who they were.
 5 Q. Did anyone get the names of anyone
 6 who was assisting you that evening?
 7 A. I don't know, sir.
 8 Q. Did any one of those people say,
 9 hey, I saw you coming out and X, Y and Z?
 10 A. I do not recall.
 11 MR. DROOGAN: Mark this as
 12 Sutton-8, please.
 13 ---
 14 (Whereupon, Exhibit Sutton-8 was
 15 marked for identification.)
 16 ---
 17 BY MR. DROOGAN:
 18 Q. Sir, I'm going to show you
 19 Sutton-8. And I'll ask you if you recognize that
 20 as you walking into the store?
 21 A. I believe that is me walking into
 22 the store. (Witness indicating.)
 23 Q. And in those three photographs that
 24 comprise Sutton-8, they're taken at 6:38 and they

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1 I do not recall what phone my wife has, but I do
 2 know it's T-Mobile.
 3 Q. Do you know where she has the
 4 photos now? Did she ever put them onto a computer
 5 or a flash drive or anything like that?
 6 A. I do not know. The last time I
 7 knew they were on her phone.
 8 Q. Is it your belief that they're
 9 still on her phone?
 10 A. I cannot answer that question with
 11 any certainty, sir.
 12 Q. Was your wife with anyone when she
 13 took the photographs?
 14 A. I do not know.
 15 Q. Did she only go there once to take
 16 photographs?
 17 A. I do not know, sir. Once again, I
 18 was in a nursing home completely under medication.
 19 Q. Did your wife ever call anyone from
 20 Speedway to inform them of what had happened to
 21 you?
 22 A. Not that she has informed me.
 23 Q. Do you know of anyone who witnessed
 24 this event, you stepping off the curb and falling

1 go from 6:38 40 seconds to 41 seconds.
 2 When you were walking into the
 3 store on the sidewalk there you did know that
 4 there was a step up to get onto the sidewalk?
 5 A. Yes.
 6 Q. And when you were entering the
 7 store, did you also know that when you exited you
 8 would have to step down to get off the sidewalk?
 9 A. If there was a step up, yes, I
 10 would have known I would have had to step down.
 11 MR. DROOGAN: Mark this as
 12 Sutton-9, please.
 13 ---
 14 (Whereupon, Exhibit Sutton-9 was
 15 marked for identification.)
 16 ---
 17 BY MR. DROOGAN:
 18 Q. I'll show you Sutton-9, which is
 19 another view of you now entering the store at the
 20 42 sub-second mark. And you say that you were
 21 wearing Nike high-top sneakers?
 22 A. Uh-huh.
 23 Q. And are they shown in that
 24 photograph there?

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1 A. I believe those are them, yes.
2 (Witness indicating.)

3 Q. Do they have they have a red sole
4 on them?

5 A. Yes.

6 Q. I don't think you're wearing
7 gloves, but is that --

8 A. No.

9 Q. No?

10 A. In fact, I can see my ring.
11 (Witness indicating.)

12 Q. And your son is not yet in the
13 photograph in that point; is he?

14 A. Yeah. I don't know -- so I know
15 he's in there with me somewhere. I don't know
16 whether he went in front of me. I don't recollect
17 the order. He might have went in there ahead of
18 me.

19 MR. DROOGAN: Mark this as
20 Sutton-10, please.

21 - - -

22 (Whereupon, Exhibit Sutton-10 was
23 marked for identification.)

24 - - -

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1 both for the stenographic record and for the
2 benefit of you folks, they printed 33 lower left
3 corner up to 34, then 35 is lower right corner and
4 36 is above that. And I'm only using the last two
5 digits of the time sequence.

6 A. Uh-huh.

7 Q. But is that your recollection of
8 the walk out of the store that evening; that is,
9 your son was holding a bag with two hotdogs?

10 A. Uh-huh.

11 Q. And you were walking out.
12 And in your left hand in Photo 34,
13 is that a receipt?

14 A. I believe that's the receipt.

15 Q. As you exited the store at this
16 point in Photograph 35, did you know that you were
17 going to have to step down off of the sidewalk?

18 A. Yes. And I remember looking down
19 and the sidewalk was not where I thought it was
20 going to be. I remember taking a step and
21 thinking that I was still on a solid plane and
22 then my leg falling down unexpectedly. So I
23 remember looking down and seeing a solid plane
24 that looked different from the darker color of the

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1 BY MR. DROOGAN:

2 Q. I'll show you Sutton-10. And this
3 is a point of sale receipt from that evening.

4 A. Uh-huh.

5 Q. Does that sound like what you
6 bought there at the Speedway store?

7 A. Yeah.

8 Q. A pack of gum?

9 A. Yeah.

10 Q. And two hotdogs?

11 A. Yeah, that's it.

12 Q. And in terms of the transaction,
13 itself, did you know the woman that cashed you out
14 that night?

15 A. I did not know her.

16 MR. DROOGAN: Mark this as
17 Sutton-11, please.

18 - - -

19 (Whereupon, Exhibit Sutton-11 was
20 marked for identification.)

21 - - -

22 BY MR. DROOGAN:

23 Q. I'll show you Sutton-11. And these
24 photographs, the way they printed onto the sheet,

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1 surrounding parking lot. And I remember missing
2 the step because I thought I was still on the walk
3 because from the top it looked like I had more
4 sidewalk than I had. And so I didn't have the
5 time to adjust my knee because I didn't know that
6 there was a drop there because it looked like I
7 had more -- more sidewalk or more step to walk to
8 before I got to the darker color pavement which I
9 assumed was the ground. So and I remember -- and
10 then I remember the sudden jolt. The one knee
11 popped. And then I remember switching my weight
12 automatically to the next knee and that popping
13 and then falling. But I distinctly remember that
14 I thought I had more sidewalk than I had. And so
15 my leg was not adjusted. And that's still hard
16 for me to -- but that's, yeah, that's painful to
17 go straight down on a drop and not adjust your
18 knee because you think you're still on a flat
19 plane.

20 Q. As you were at the point where
21 you're shown in Exhibit-11 and about to open the
22 door, could you see where the sidewalk ended?

23 A. It looks like it is the darker
24 area.

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1 Q. And I'm only asking you when you're
2 in that position right there --

3 A. Coming in?

4 Q. Leaving.

5 MR. FOX: No. He's looking --

6 THE WITNESS: Which one?

7 BY MR. DROOGAN:

8 Q. The lower right photograph, yes.

9 MR. FOX: He's asking you you're
10 still inside the store.

11 THE WITNESS: Uh-huh.

12 BY MR. DROOGAN:

13 Q. And as you're looking through the
14 door, were you able to see where the sidewalk
15 ended?

16 A. Yeah. When I was looking down my
17 perception was the sidewalk was the darker area.

18 Q. What I'm saying is as you were
19 looking out the door there, were you able to see
20 where the sidewalk ended; do you recall that?

21 A. No, I don't, I don't recall it,
22 specifically.

23 MR. DROOGAN: Mark that as
24 Sutton-12, please.

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1 ---

2 (Whereupon, Exhibit Sutton-12 was
3 marked for identification.)

4 ---

5 BY MR. DROOGAN:

6 Q. And I'll show you Sutton-12 and
7 I'll ask if from that vantage point shown in the
8 photographs that have 35 and 36 seconds,
9 sub-seconds, as you were pushing the door open and
10 looking out towards the vehicles, could you then
11 see the edge of the sidewalk where it ended?

12 A. I don't recall, but I'm assuming
13 because I don't know exactly where I was looking
14 at that time. It's hard to tell because my back
15 is turned.

16 Q. Is your head tilted in 35, tilted
17 downwards?

18 A. No, it's not.

19 MR. DROOGAN: Mark this as
20 Sutton-13 and this as Sutton-14, please.

21 ---

22 (Whereupon, Exhibits Sutton-13 and
23 Sutton-14 were marked for
24 identification.)

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1 ---

2 BY MR. DROOGAN:

3 Q. And on Sutton-13, sir, the
4 photograph, the 37 sub-seconds at the bottom, is
5 your head tilted down there looking at your path?

6 A. I can't distinguish from there.

7 Q. I'm referring to the bottom
8 photograph, not the top.

9 A. I believe that it is, but I'm not
10 sure.

11 Q. And in Photograph 38 you're now
12 completely outside the store and onto the
13 sidewalk?

14 A. I'm on the ledge.

15 MR. FOX: This here?

16 THE WITNESS: Yes, this right here,
17 yes. (Witness indicating.)

18 BY MR. DROOGAN:

19 Q. You said you were on what?

20 A. I'm right here and I'm walking on
21 the sidewalk. (Witness indicating.)

22 Q. At that point did you know that you
23 had to step down onto the macadam?

24 A. At that point I'm looking down and

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1 it seems as though I have more sidewalk than I
2 have. So it seems as though I can continue.
3 That's why my gait hasn't changed, I'm thinking I
4 could continue to walk straight across at least
5 another two feet.

6 Q. At least another two feet?

7 A. Yeah.

8 Q. Are you telling us that you were
9 looking down right directly over the edge of the
10 sidewalk down onto the ground?

11 A. At that point, yes, I was looking
12 down over the edge, and that when I was looking
13 down I believe that from the way it was, the
14 perception that night and the way was colored, I
15 believe that the sidewalk begun out where the
16 darker area is and I was just walking and was
17 going to brace myself when I got to the darker
18 area because I believe that's where the drop
19 happened, but the drop happened much sooner than
20 that.

21 Q. Were you getting a sense that it
22 was a little bit different than when you walked
23 in; that is, the distance from the macadam to the
24 door?

1 A. Well, I was from a different angle.
2 Walking in I can actually see the rise going up.
3 You can see the rise. But going here it was a
4 perceptual thing where I thought --
5 (Witness indicating.)

6 MR. FOX: I don't think you're
7 answering his question.

8 Can you repeat your question again?

9 MR. DROOGAN: Sure.

10 BY MR. DROOGAN:

11 Q. Were you getting a sense as you
12 were exiting the store and starting to take a
13 number of steps to get out towards your car that
14 you were walking for a longer period of time on
15 the sidewalk than you did when you stepped up and
16 walked into the store?

17 A. Oh, no. I just looked down and I
18 was just looking at where the sidewalk ended and
19 where I needed to step down. I wasn't judging
20 distance.

21 Q. Were you able to see the line on
22 the walkway as you were walking out, the line on
23 the sidewalk indicating to you that it could be a
24 curb that you were approaching, the edge that you

1 saw something like that as you were walking out
2 the door that signalled to you that you were
3 reaching the edge of the walk, the sidewalk?

4 A. I don't recollect. I know when I
5 looked down it just looked like I had more ledge
6 than I had. The perception of the colors looked
7 like that the ledge extended out more than it
8 actually did.

9 Q. I'll show you one of your
10 photographs that we've marked as Sutton-14, and
11 ask you if you saw the area that I'm circling --

12 MR. FOX: What number is it?

13 MR. DROOGAN: 14.

14 BY MR. DROOGAN:

15 Q. If you saw that line in the
16 concrete on your way out of the store that night?

17 A. When I looked down I did not see
18 that line.

19 Q. Did you see it on the way in?

20 A. I did not recollect seeing it on
21 the way in. What I did see on the way in was the
22 rise up.

23 Q. In your experience walking on
24 sidewalks in this area, does that line usually

1 were approaching?

2 A. No, sir. The colors at night, the
3 colors between the top of the ledge and the
4 whatever was done there was exactly -- almost
5 exactly the same. And the only distinguishing
6 color was the color that distinguished the darker
7 color parking lot from that work, whatever was
8 done, and the curb. That was the only
9 distinguishing color that I could notice when I
10 looked down because I thought I was on the same
11 plane, pretty much like it is in this picture, it
12 looks like it's one plane and the sidewalk begins
13 in the darker area.

14 Q. Do you know what an expansion joint
15 is?

16 A. I do not, sir.

17 Q. Do you know in a sidewalk like in
18 front of your house where there's a block and then
19 there's a line that looks like somebody took their
20 finger and put it across the block when it was
21 poured and every three feet you see a line and
22 every three feet you see a line?

23 A. I know of that, but I'm not sure --

24 Q. That's what I'm asking you, if you

1 signal to you that the sidewalk is about to end
2 and you're about to get to the curb and into the
3 street?

4 A. No. In my experience what usually
5 signals that for me is the yellow highlighted line
6 that distinguishes the curb from the street
7 normally when I'm walking sidewalks, or that the
8 black street top comes all the way up to the
9 curbs, and when I look down I know that I'm
10 stepping on a curb because it is a distinctly
11 different color than the street or and/or if it's
12 the same color it's usually yellow, highlighted
13 yellow. That's how I judge it when I'm up to the
14 street.

15 Q. Does that line ever indicate to you
16 that the sidewalk's about to end and you're about
17 to have to step down?

18 A. No. Again, the only thing it
19 indicates to me is that the change of color from
20 the curb to the street and/or the yellow line that
21 they put there to distinguish it.

22 Q. Are you saying that that line
23 wasn't there on the evening in question?

24 A. I don't recollect, sir. All I know

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1 is that a yellow line was not and that the black
2 pavement did not come up. And I believe when I
3 looked down that I was still on sidewalk. I don't
4 know that that yellow line, that line meant to me
5 that the sidewalk was going to end. But I know
6 that the coloration was exactly the same, and it
7 gave the perception as I looked down that I was
8 still on sidewalk. That's what I -- and it jarred
9 me because when I stepped my knee wasn't ready.
10 Normally when you step off a curb you bend, but I
11 didn't bend because I thought I was just walking
12 straight on sidewalk. So I couldn't bend my knee
13 for a shock because I thought I had more sidewalk.

14 MR. DROOGAN: Mark this as
15 Sutton-15, please.

16 - - -

17 (Whereupon, Exhibit Sutton-15 was
18 marked for identification.)

19 - - -

20 BY MR. DROOGAN:

21 Q. I'll show you Sutton-15, and I'll
22 ask you, sir, if that line we were just
23 discussing, if you can see it at the edge of the
24 sidewalk; that is, a couple of inches from the

Page 134

1 edge of where that sidewalk ends?

2 A. I can see this line in this photo,
3 yes.

4 Q. And can you circle it on that photo
5 for me, please?

6 A. Uh-huh.

7 Q. Like I did on the other one?

8 A. Uh-huh. (Witness complies.)

9 Oh, you mean -- it's hard for me to
10 see here because it looks like it goes all the way
11 out. So are you talking about -- I mean, I see
12 this line, but here it looks like the side -- do
13 you see what I'm saying? It looks like the
14 sidewalk goes all the way to here. So it seems to
15 me from this it looks like it's one -- so it's
16 hard. I mean, it looks like it's just one
17 straight piece. (Witness indicating.)

18 Q. Okay. Thanks.

19 A. I --

20 MR. FOX: That's it.

21 THE WITNESS: That's it?

22 MR. FOX: Yes.

23 THE WITNESS: Even it's hard.

24 MR. FOX: It's all right.

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1 THE WITNESS: That's not a good
2 photo.

3 MR. DROOGAN: Mark this as 16,
4 please.

5 - - -

6 (Whereupon, Exhibit Sutton-16 was
7 marked for identification.)

8 - - -

9 BY MR. DROOGAN:

10 Q. I'll show you Sutton-16, which
11 includes photographs from the time of 6:42:37 and
12 6:42:38 and ask you if in 6:42:37 as you're
13 stepping there were you able to see where the
14 sidewalk ended?

15 A. It was hard to distinguish. It
16 looks like the sidewalk is extended out. And I
17 couldn't distinguish it that night.

18 Q. And is it your testimony that you
19 were able to see just over the edge of the
20 sidewalk onto the newly poured concrete from that
21 vantage point?

22 A. No. From this vantage point I
23 think that the concrete extends out. It seems
24 like the concrete is going straight out to the

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1 darker area. Can I circle the area where I think
2 that I thought where the concrete extended?

3 Q. No.

4 A. Okay. So when I look down it
5 looked as if the concrete extended out to the area
6 where the dark area is. So, as you can see, I'm
7 walking like I'm actually about to step onto
8 concrete. I'm not bending my knee like I'm
9 stepping down. I'm stepping like I'm stepping
10 onto concrete because I'm thinking I have another
11 step to go before I get to the drop. And actually
12 the discoloration threw me off, it threw my
13 judgment off when I looked down. So but actually
14 I'm not stepping on a plane. It goes abruptly
15 down. And, as you can see, my foot, I'm actually
16 thinking that I'm stepping. And that's why my
17 foot is as if I'm walking straight across. See, I
18 don't lift it to put it down.

19 Q. In 6:42:38, which direction you are
20 you looking?

21 A. I believe that I can't see. I
22 can't distinguish where my head is here.

23 Q. Well, when you were taking that
24 last step before you fell, do you know which

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1 direction you were looking?

2 A. Yes, I was looking down.

3 Q. And in your right hand, do you know
4 what's shown in your right hand?

5 A. It looks like there's a white piece
6 of paper.

7 Q. Were you looking at your receipt as
8 you were stepping down off the curb, sir?

9 A. I was looking down as I was walking
10 to make sure that I was looking down at where I
11 was walking.

12 Q. But were you looking at your
13 receipt?

14 A. I do not believe I was looking at
15 my receipt.

16 Q. Had you shifted the receipt from
17 your left hand to your right hand as you exited
18 the door?

19 A. I don't recall.

20 Q. And you're how tall, sir?

21 A. I'm about six foot, three.

22 Q. And as you were walking out of the
23 store, did you get a sense that you were much
24 higher than the cars that were at the pump there;

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1 that is, a lot taller and a lot higher than
2 normal?

3 A. I had a sense that I was still on a
4 ledge, yes.

5 Q. And with this uncertainty of where
6 the sidewalk ended, what did you do to make sure
7 you had solid footing where you were walking?

8 A. So I looked down. And I believe
9 from the perception that I was walking I still had
10 a few more steps to go before I got to the ledge.
11 However, I did not have those steps. And so when
12 I put my foot down to walk on the plane my leg
13 actually dropped. And that's when my knee popped.
14 Then I switched my weight and the other one
15 popped.

16 MR. DROOGAN: Mark this as 17,
17 please.

18 - - -

19 (Whereupon, Exhibit Sutton-17 was
20 marked for identification.)

21 - - -

22 BY MR. DROOGAN:

23 Q. I'll show you Sutton-17, sir, and
24 ask if these series of photographs at 6:46 and

Page 139

1 6:45 show the car that you drove to the Speedway
2 store?

3 A. Yes, sir, that's my car.

4 Q. And which side of the car is the
5 tank?

6 A. It is on the side where the gas
7 tank is. So it's on the left side. I believe
8 that's the left side, driver's side.

9 Q. Did you move your car after getting
10 fuel?

11 A. I did not.

12 Q. So where that car is positioned
13 right now you were able to reach the hose to the
14 fill area of the car?

15 A. Yeah, because it's on the same
16 side, it's on the driver's side, yep.

17 Q. But the hose was long enough to get
18 to the rear of the car?

19 A. Uh-huh, uh-huh.

20 Q. And at some point I saw it looked
21 like -- strike that question.

22 On the videotape it looked like you
23 handed your wife something while you were on the
24 ground. Do you recall doing that?

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1 A. Yeah. She wanted me keys, I
2 believe to the car so Alex could go to the car.

3 Q. And that's what he's doing here?

4 A. I believe that's what he's doing,
5 yes.

6 MR. DROOGAN: Mark this as 18,
7 please.

8 - - -

9 (Whereupon, Exhibit Sutton-18 was
10 marked for identification.)

11 - - -

12 BY MR. DROOGAN:

13 Q. I'll show you Sutton-18. And the
14 time on that, for the record, is 6:48:46. At that
15 point you're talking to someone in a blue shirt or
16 someone with a blue shirt is facing you.

17 Do you know who that is?

18 A. Yes. I believe that was the
19 attendant.

20 Q. And what did you tell the
21 attendant? What do you remember telling her about
22 how this happened or why it happened?

23 A. She asked me what had happened.
24 I said, I came out. And I told her

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1 that I looked down and I missed the curb. I
2 thought that the curb -- I don't know exactly what
3 I said, but I know it was something to the point
4 that I missed the curb, I missed the curb, yeah, I
5 looked down and I missed the curb.

6 Q. Do you recall anything else that
7 you said to her other than that you looked down
8 and you missed the curb?

9 A. That I was cold.

10 Q. About the incident and how it
11 happened?

12 A. No, no, un-unh.

13 Q. Did you say anything to her about
14 what your plans had been for the evening?

15 A. I don't recall. I was in
16 excruciating pain. Most of the time I was just
17 yelling. And my wife was there trying to calm me
18 down. I was in excruciating pain.

19 MR. DROOGAN: Mark this as
20 Sutton-19, please.

21 - - -

22 (Whereupon, Exhibit Sutton-19 was
23 marked for identification.)

24 - - -

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1 medicine I don't recall who I spoke to. They had
2 a real hard time controlling my pain.

3 Q. Do you know any relatives of Mr.
4 Fox?

5 A. I do not.

6 Q. Who was the first one that you told
7 owner your lawyer about the incident after it
8 happened; that is, the days and weeks after?

9 A. My wife. Of course I had to
10 explain this to my doctor. The person that came
11 and picked me up in the EMT asked me because he
12 had asked me before he lifted me up, so he asked
13 me what happened. The people in the emergency
14 room asked me what happened.

15 Q. Other than me and telling me today
16 and possibly your lawyer, who else did you tell
17 that you couldn't tell where the sidewalk began
18 and ended as you were walking out of the store?

19 A. It's hard to recollect, sir,
20 because, again, I was on pain medicine and they
21 had a really hard time controlling my pain. But I
22 do know that a number of people asked me what had
23 happened because it was so unusual that both knees
24 were being ruptured. And I told them that I came

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1 BY MR. DROOGAN:

2 Q. I'll show you Sutton-19. The time
3 is 6:43:08. And there are a couple of people that
4 are standing around you?

5 A. Uh-huh.

6 Q. Did you mention to any of them why
7 it was that you fell to the ground?

8 A. I don't recall.

9 Q. Do you know any of those fellows?

10 A. No, I do not. The only person I
11 know in this picture is my wife and my son.

12 Q. Are you on social media, sir?

13 A. Is that Facebook?

14 Q. Facebook, Instagram, Snapchat?

15 A. Facebook.

16 Q. Did you ever post anything on
17 social media about this?

18 A. I did not.

19 Q. Did you ever tell anyone outside of
20 your family how this happened, whether it be
21 co-workers, family, friends, relatives?

22 A. I don't believe I spoke to
23 co-workers, but I know during the time of the
24 incident I was in so much pain or so much pain

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1 out of the store and when I looked down I missed
2 the curb because I thought, you know, I just --
3 the perception of it was off, when I thought I had
4 more sidewalk. I didn't. And as a result I
5 couldn't prepare my leg for the drop and as a
6 result I busted my knee and then my other knee.

7 Q. Outside of medical people, who else
8 have you told that to other than me and your
9 lawyer and your family?

10 A. No one has really asked. And
11 outside of that, I mean, there may have been some
12 co-workers that asked me about what happened. And
13 I may have explained it to them, but I don't
14 recall.

15 Q. Are you saying that you forgot that
16 there was a step off the sidewalk or you just
17 didn't see it?

18 A. I'm saying that when I looked down
19 the perception was that I had more sidewalk than I
20 had and because of the perception the sidewalk
21 actually didn't begin where I thought it was going
22 to begin because of the same color of that right
23 area I thought I had a little more sidewalk. I
24 thought the edge was about two more feet out than

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1 it was based on the perception when I looked down,
2 and as a result I could not prepare my leg for the
3 drop because I thought I was still on the same
4 plane.

5 MR. DROOGAN: I'm going to look
6 over my notes.

7 ---

8 (Whereupon, a discussion took place
9 off the stenographic record.)

10 ---

11 BY MR. DROOGAN:

12 Q. You're wearing glasses today?

13 A. Uh-huh.

14 Q. And I couldn't quite tell during
15 some of your testimony if they're for reading or
16 distance or both. What do you wear the glasses
17 for?

18 A. I think I'm farsighted. What's the
19 one where you can see -- I can see close up. I
20 can't see far.

21 THE WITNESS: Which one is that?
22 That's farsighted.

23 MR. FOX: I don't want to say
24 anything on the record, but I'm not

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1 A. Yes, I believe so, sir.

2 Q. Before this, did you ever have any
3 other instances of falling?

4 A. No, sir.

5 Q. Before this, did you ever have an
6 instance where you misjudged a step off of five or
7 six inches?

8 A. Not that I recollect, sir.

9 Q. We were talking about curbs and
10 sidewalks earlier. How many just ballpark would
11 you say the number is of times you stepped off a
12 curb that would be similar to the curb in front of
13 the Speedway store?

14 A. With that piece of work that they
15 had there, I don't know that I have ever seen a
16 curb that you couldn't distinguish the drop like
17 that one.

18 Q. You never saw a concrete curb that
19 ended on a concrete walkway below it?

20 A. All the curbs that I remember
21 stepping off, sir, the blacktop or the street top
22 goes right up to the curb where you look down you
23 can see that there's a difference between the curb
24 and the street and it comes right up to it and/or

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1 sure.

2 THE WITNESS: I can see things
3 close to me, but I can't see things far
4 away.

5 BY MR. DROOGAN:

6 Q. Were you wearing the glasses on the
7 evening of the incident?

8 A. Yes.

9 Q. The same glasses?

10 A. I believe these are the same
11 glasses, yes.

12 Q. And you need those basically to see
13 distance?

14 A. Until I turned 45. And I also need
15 the progressive in them now to read because my arm
16 is not long enough.

17 Q. So those glasses right now are the
18 same glasses you had on the evening of the
19 incident?

20 A. I believe so, sir, yes.

21 Q. And on the evening of the incident
22 you had progressive bifocals or progressive
23 glasses that allowed you to see both distance and
24 to read?

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1 if there is some problem to distinguish it it's
2 either got the yellow striped lines at the curb to
3 help you distinguish it or it's painted yellow so
4 you can see the yellow that distinguishes. But
5 I've never seen one where the top was the exact
6 same color extending out. I've never seen a curb
7 like that.

8 Q. How about just a six-inch curb, how
9 many would you say you've stepped off of in your
10 lifetime?

11 A. I don't know, sir. I just never
12 measured curbs. So I don't know the exact
13 distances. But I do know that most curbs when I
14 look down I can distinguish where the curb stops
15 and the drop begins coming down off the curb.

16 Q. Do you walk up onto any curbs at
17 the Ferris School during the course of your day?

18 A. Yes.

19 Q. And sidewalks?

20 A. Yes.

21 Q. Do you have any problems with
22 those?

23 A. No. And, to my recollection, they
24 all the top of the sidewalk is distinguished from

1 the piece that you're stepping down into as a
2 state facility.

3 Q. As you were stepping out onto the
4 sidewalk that evening you could feel that the
5 sidewalk was below your feet when you stepped?

6 A. When I looked the perception was
7 that it was below my feet, the perception.

8 Q. Could you feel it, could you feel
9 that you were stepping on the sidewalk? As you
10 opened the doors and stepped out you knew you were
11 on the sidewalk?

12 A. Yeah, then I knew.

13 Q. And as you got to the edge of the
14 sidewalk as depicted in the photographs and your
15 left foot extended out onto the edge of the
16 sidewalk, could you feel that the front portion of
17 your foot was no longer on anything solid?

18 A. When I looked down it seemed as
19 though I was stepping on a level plane, that's
20 what it looked like. So I did not realize that it
21 was not level until my leg dropped, and by that
22 time the damage was done.

23 Q. Okay. My question to you is a
24 little bit different than that.

1 Could you feel as your left foot
2 was extending toward the edge of the curb that the
3 front of your foot, the front of your shoe was no
4 longer -- there was nothing under it anymore?

5 A. Not until it was too late after my
6 foot had dropped already.

7 Q. So you did get that sensation that
8 night, that there was nothing under the front of
9 your foot as you stepped out towards the edge of
10 the curb?

11 A. Only after I committed to going
12 down.

13 Q. Committed to going down where?

14 A. Only after my foot had already --
15 the only time I stepped and believed that it was a
16 plane and my foot had dropped completely and the
17 damage was done did I realize then that I felt in
18 a big way then that the curb was not there.

19 Q. What foot went first off the
20 sidewalk?

21 A. I believe it was my left.

22 Q. In Sutton-16, the lower photograph
23 at the bottom, 6:46:38?

24 A. Uh-huh.

1 Q. Where it shows your left foot at
2 the edge of the sidewalk, when you got to that
3 point could you feel that there was no longer
4 anything under the front of your foot?

5 A. At that point I'm walking as if I'm
6 walking on a solid plane. So at that point I did
7 not feel it until my foot dropped.

8 Q. And is it your testimony, sir, that
9 that was the beginning of your left foot stepping
10 off of the sidewalk?

11 A. To the best of my recollection,
12 yes.

13 Q. Okay. And that there's not yet
14 another step that you took to get out to the
15 macadam?

16 A. Well, for me -- could you please
17 define what macadam means?

18 Q. We defined that earlier as the
19 space between the sidewalk and the pumps. It's
20 called many things.

21 A. Okay.

22 Q. But I just called it macadam
23 because it's pavement.

24 A. So now could you repeat your

1 question?

2 Q. Sure. Do you believe that the
3 final step you were taking before you stepped off
4 and onto the macadam was depicted in that lower
5 photograph as opposed to you taking one more step
6 out?

7 A. So I'm still not sure of that
8 question. But I believe -- could I restate the
9 question to make sure I'm understanding what
10 you're saying?

11 Q. Sure. That's what we talked about
12 earlier. That's fair enough.

13 A. Can I restate the question?

14 Q. Yes, that's fair enough.

15 A. Are you asking me that when I
16 walked out am I aware that I had a few more steps
17 to get to before I had to step down into the
18 parking lot?

19 Q. No. I would never ask that
20 question.

21 A. Okay. That's what I thought I
22 heard.

23 Q. What I'm asking you is based upon
24 that photograph are you saying that there was not

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1 another step that you took before you reached the
2 macadam or is that the last step you took before
3 you reached the macadam, that which is depicted in
4 the photograph, do you remember it being --

5 A. I don't remember that, sir.

6 Q. That's fair enough.

7 A. Yeah, I don't remember that.

8 Q. Before the incident, did you have
9 any problems with your depth perception?

10 A. No.

11 Q. Do you find that your wearing the
12 glasses, particularly the progressive glasses,
13 enhances your depth perception?

14 A. No. That's just for reading. And
15 they're only, you know, when I look up, but I'm
16 farsighted, so I can see things close up. I just
17 need glasses to see things far away.

18 Q. Is it your testimony, sir, that the
19 sidewalk and the patch of concrete in front of it
20 looked exactly the same to you, the same color?

21 A. That night, yes, that night when I
22 looked down to step forward they looked exactly
23 the same as if I was stepping on the same plane.

24 Q. And was that the way it looked on

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1 evening?

2 A. Yes, I could because it was a
3 coloration that distinguishes it, and you can see
4 the rise going up.

5 Q. Did you step on that area that's
6 immediately in front of the curb when you were
7 walking into the store?

8 A. Probably so, but then I could see
9 the rise going up. And that's when I knew that
10 with that rise that's where you have to lift your
11 leg up because the color is distinguishing it.

12 Q. And did you notice that color
13 distinguishing characteristics of the area as you
14 were walking into the store?

15 A. All I knew is that I could
16 distinguish the rise of the concrete as I stepped
17 up. It was easy to distinguish going in because I
18 could see the rise. When I looked down I could
19 see the rise.

20 Q. Did you take note that it looked
21 like the ground in front of the sidewalk was a
22 similar color to the top of the sidewalk?

23 A. I did not take note. All I knew is
24 that I could take -- that I noticed the rise in

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1 the walk in, did it look like it was exactly the
2 same as you walked in?

3 A. No. When I walked in I was focused
4 on the rise of the sidewalk, which I could clearly
5 see from where I was walking in at. I didn't have
6 to look down to see the -- you know, I looked down
7 and I could perceive the rise up because there's a
8 discoloration between the rise up. So when I came
9 in I looked down and I could see the rise, I could
10 see the rise up coming in. But when you're coming
11 out the perception is that it's a straight plane.

12 Q. I just want to make sure we're on
13 the same page here.

14 MR. DROOGAN: Mark these as
15 Sutton-20 and Sutton-21.

16 ---

17 (Whereupon, Exhibits Sutton-20 and
18 Sutton-21 were marked for
19 identification.)

20 ---

21 BY MR. DROOGAN:

22 Q. And ask you if on Sutton-20 or 21
23 if you are able to observe the area immediately in
24 front of the curb on your walk into the store that

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1 the sidewalk going in which allowed me to step up.

2 MR. DROOGAN: Thank you, sir.
3 That's all I have. Thank you.

4 THE WITNESS: Uh-huh.

5 MR. FOX: No questions.

6 ---

7 (Whereupon, the deposition
8 concluded at 5:52 p.m.)

9 ---

CERTIFICATION

I, DOUGLAS S. DIAMOND, hereby
certify that the foregoing is a true and correct
transcript transcribed from the stenographic notes
taken by me on Monday, February 27, 2017.

DOUGLAS S. DIAMOND
Court Reporter - Notary Public
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